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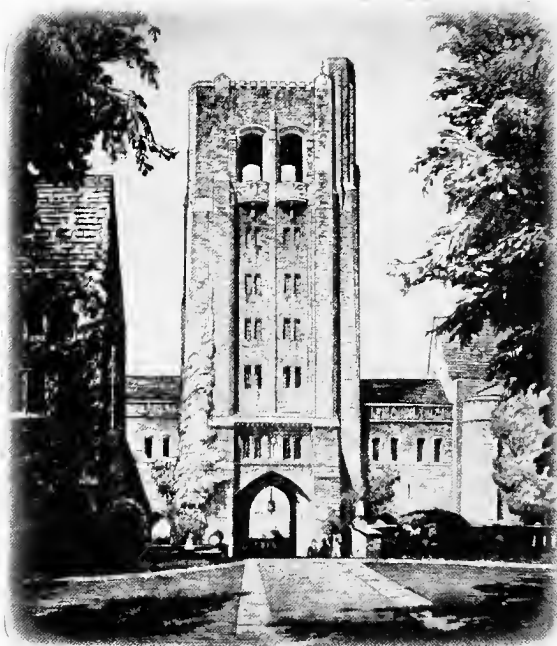
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OFFICE BOY'S DIGEST

Cullings from the American,
English, and Canadian Reports

SELECTED AND COMPILED

BY

The Office Boy

WITH AN INTRODUCTION BY B. A. MILBURN.

W. A. W.
Krell

It is not so much to know where to find the law as it is to recognize it when it is found.—*With apologies to Judge Sharswood.*

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***"The love of pleasure is man's eldest born;
Wisdom, her younger sister, though more grave,
Was meant to minister, and not to mar
Imperial pleasure, queen of human hearts."***

***Quoted by Clerke, J., in Christy v. Murphy,
12 How. Pr. (N. Y.) 77.***

INTRODUCTION.

To those unthinking persons in whose minds the Office Boy merely symbolizes the demise of a feminine grandparent in suspicious coincidence with a smiling afternoon and a baseball game, this book will doubtless come as a surprise. Some, perchance, will loftily pass it by on the other side, as who would say: "Can any good thing come out of an Office Boy?"

Beyond peradventure, there are to be found here and there misguided Office Boys who cannot resist the temptation to anticipate or postdate the decease of their forebears in the interest of sport, but a sweeping condemnation of an entire class because of the shortcomings of some of its members must always be a source of grief to the judicious.

Office Boys there be—not many, perhaps, but some—who are zealous in the ways of righteousness, eagerly picking up the crumbs that fall from the tables of supercilious Culture, gleanings from the sweepings and the scrap-baskets gems of wisdom which have escaped eyes fixed on larger things, and striving as best they may in their humble station to advance the sum of human knowledge. Of such stuff is the compiler of this digest. That he has pursued his investigations with unflagging industry and without regard

for conventional methods, this little volume stands as an eloquent and, let us hope, enduring witness. He has remorselessly tracked his quarry to the remotest fastnesses of the reports, and though his zeal has led him out of the beaten tracks into the unfrequented byways of the law, who shall say that he has not snatched from the jungles of oblivion many matters of great pith and moment?

That the paragraphs here collected are not the product of a disordered imagination, but are in every instance sustained by the cases cited, can easily be verified by the skeptical. Some of them have from time to time appeared in *Law Notes*, published by Edward Thompson Company, and—so the Office Boy avows—have elicited from the public a clamorous demand that the entire collection be produced in book form.

Before loosing his digest upon the profession, the Office Boy has given careful consideration to the assertion of Lord Mansfield in *Miller v. Race*, 1 Burr. 452, that “it is a pity that reporters sometimes catch at quaint expressions that may happen to be dropped at the bar or bench, and mistake their meaning.” But, as the point was not involved in the decision of the case, he feels that the rule of *stare decisis* is not applicable, and therefore takes the liberty of dissenting from the opinion of that worthy but defunct jurist.

He has confided to the present scribe that he will not be utterly cast down if this book, notwithstanding its

obvious merits, should not be cited as authority by the Courts, for he realizes the force of the remark made by Judge Bleckley in *Thompson v. Davitte*, 59 Ga. 479, that "it is not every headnote that is fit to be given to the jury," which is, of course, equally true of digest paragraphs. Moreover, he finds much comfort in the words of Lord Redesdale, who, in *Shannon v. Shannon*, 1 Sch. & Lef. 324, remarked: "I am always sorry to hear Mr. Justice Blackstone's Commentaries cited as an authority: he would have been sorry himself to hear the book so cited: he did not consider it such." The Office Boy appears to misdoubt that such an occurrence would have caused the eminent commentator very poignant grief, and expresses himself as prepared to sustain a similar affliction with considerable fortitude.

In conclusion, the Office Boy wishes it known that he disclaims responsibility for typographical errors and other suchlike imperfections for which it is customary to apologize in prefaces. And so he puts himself upon the country.

B. A. M.

*Alexandria, Va.,
February 1, 1904.*

OFFICE BOY'S DIGEST.

Cullings from the American, English and Canadian Reports.

Abandonment.

See DIVORCE, 9, 10.

Of sinking ship, see MARITIME LAW, 5.

Abortion.

See INDICTMENTS, 4.

Disposition of foetus, see BURIAL, 2.

ABUSIVE AND OFFENSIVE LANGUAGE.

See also LIBEL AND SLANDER ; QUARRELS ; WORDS AND PHRASES, 5.

As evidence of insanity, see INSANE PERSONS, 9.

By school teacher, see SCHOOLS AND COLLEGES, 7.

In general.

1. Mere grimaces or contemptuous facial expressions cannot amount to abusive language. *Behling v. State*, 110 Ga. 754, 36 S. E. Rep. 85, *per Lewis*, J.

Damn, etc.

2. Even if not profane, the use of the word "damned" is "certainly improper." *Pugh v. City*, etc., Tel. Assoc., 8 Ohio Dec. (Reprint) 644.

3. The words "you are a God damn low down son of a bitch," do not constitute "obscene and vulgar language." *Shields v. State*, 89 Ga. 549, 16 S. E. Rep. 66.

4. A charge of "cursing" is not proven by evidence that the accused said "damn" or something to that effect. *Carr v. Conyers*, 84 Ga. 287, 10 S. E. Rep. 630, 20 Am. St. Rep. 357.

Words spoken to woman.

5. The language "I want to stay here awhile" addressed by a man to a woman, is not, *per se*, either obscene or vulgar. *Stamps v. State*, 95 Ga. 475, 20 S. E. Rep. 271, *per Lumpkin, J.*

Accident Insurance.

See INSURANCE, 6-8.

ACCOUNTING.

"An honest account is a true account." *People v. Buelna*, 81 Cal. 135, 22 Pac. Rep. 396.

ACTIONS.

In general.

1. "A mere right to a thing, or concerning a thing, never did constitute a cause of action." *Auld v. Butcher*, 22 Kan. 400, *per Valentine, J.*

2. The making of an assignment for the benefit of

creditors is not an action. *Hammel v. Schuster*, 65 Wis. 669, 27 N. W. Rep. 620.

3. "There is nothing sacred about a replevin suit." *Cox Shoe Co. v. Adams*, 105 Iowa 402, 75 N. W. Rep. 316, *per* Ladd, J.

4. There is nothing certain about a lawsuit except the expense of it. *Carlton v. Rockport Ice Co.*, 78 Me. 49, 2 Atl. Rep. 676.

5. An administrator cannot bring suit against himself to recover a debt due from him to his intestate. *Perkins v. Se Ipsam*, 11 R. I. 270.

Prevalence of.

6. The law "affords sufficient opportunity for spiteful and contentious persons to harass their neighbors, by strict insistence upon technical rights." *Hannabalon v. Sessions* (Iowa 1902), 90 N. W. Rep. 93.

7. "The law makers and the law expounders have finally and recently perceived that the people of this country are the most litigious in the world. That is perhaps a natural result among people whose efforts are to live by their wits, rather than by toil." *Hughes v. Green*, 75 Fed. Rep. 691, *per* Hallett, J.

Prerequisites.

8. To insist on a prosecution for felony, in order to open the way to a recovery for a civil injury, where a crime has been committed, is to walk backwards. The

old law on the subject has been left behind. *Powell v. Augusta, etc., R. Co.*, 77 Ga. 192, 3 S. E. Rep. 757, *per* Bleckley, C. J.

Questions involved.

9. The questions in a case are divisible into "pints" and "pintees," and counsel should not worry the court with the latter. *Bowden v. Achor*, 95 Ga. 243, 22 S. E. Rep. 254, *per* Lumpkin, J.

10. "The importance of questions" is "in this ratio: first, costs; second, pleading; and third, very far behind, the merits of the case." *Hall v. Eve*, 4 Ch. D. 341, *per* James, L. J.

How conducted.

11. Where an action is "started as a through train, it must go through, and what is no less important, must keep its freight on board, not deliver the whole of it *en route*, or at some way station, to favorite consignees." *Fouche v. Harison*, 78 Ga. 359, 3 S. E. Rep. 330, *per* Bleckley, C. J.

Effect of ending.

12. "Lawsuits are frequently ended without having determined anything except, possibly, the costs." *Van Arsdale v. King*, 155 N. Y. 325, 49 N. E. Rep. 866, *per* O'Brien, J.

Act of God.

See CARRIERS, 12.

Adages.

See MAXIMS, PROVERBS AND ADAGES.

Adjacent Landowners.

See ARCHITECTURE ; BOUNDARIES ; TRESPASS, 4, 5.

Administrators.

See EXECUTORS AND ADMINISTRATORS.

ADMIRALTY.

See also MARITIME LAW.

Sea of suspicion, see EVIDENCE, 50.

“Chancery of the seas.”

1. “A court of admiralty is the ‘chancery of the seas.’” Six Hundred Tons of Iron Ore (D. C.), 9 Fed. Rep. 595, *per* Nixon, J.

Steamboats.

2. “A steamboat is not a person.” *Chouteau v. Steamboat St. Anthony*, 20 Mo. 519, *per* Scott, J.

ADOPTION.**Distinction between heir and adopted child.**

An heir “is a creature of common law, while a child by adoption is a creature of statutory law.” *Bray v. Miles*, 22 Ind. App. 432, 54 N. E. Rep. 446, 55 N. E. Rep. 510, *per* Wiley, J.

ADULTERY.

See also FORNICATION.

Effect of, upon value of wife to her husband, see HUSBAND AND WIFE, 37.

Killing man taken in, see HOMICIDE, 1.

Invasion of property.

1. "Adultery is the highest invasion of property." *Reg v. Mawgridge*, J. Kel. 119.

Previous acquaintance.

2. "Men and women without any previous acquaintance and intimacy do not ordinarily become criminally intimate with each other." *State v. Noakes*, 70 Vt. 247, 40 Atl. Rep. 249, *per* Thompson, J.

Object of committing.

3. "An adulterous connection is not had with a view to subsequent marriage and legitimating children, but with a view to present pleasure; and the ardent hope and desire usually exists that no offspring should result therefrom." *Ives v. McNicoll*, 59 Ohio St. 402, 53 N. E. Rep. 60, 69 Am. St. Rep. 780, *per* Burket, J.

ADVERSE POSSESSION.**Erection of hog pen on premises.**

The erection of a hog pen on land is no evidence of ownership of the land on which it is put. *Grimes v. Ragland*, 28 Ga. 123, *per* McDonald, J.

Age.

Evidence as to, see EVIDENCE, 63.

AGRICULTURAL JURISPRUDENCE.

Hops, see FOOD, 3.

Farmers.

1. A person who lives upon his farm and carries it on through others is not necessarily a farmer. *Johnson v. London Guarantee, etc., Co.*, 115 Mich. 86, 72 N. W. Rep. 1115, 40 L. R. A. 440, 69 Am. St. Rep. 549.

2. "In a rural township a man's business is known to his neighbors, and is the subject of corner-grocery and fireside talk." *Hitchcock v. Wiltsie*, 6 Dem. (N. Y.) 255, *per* Spring, J.

3. A man whose business it is to till the soil does not "earn his livelihood by his manual labor as a skilled artisan or handicraftsman." *Watson v. Lederer*, 11 Colo. 577, 19 Pac. Rep. 602, 7 Am. St. Rep. 263.

Fruit.

4. Dried prunes are fruit. *De Pau v. Jones*, 1 Brev. (S. Car.) 437.

"Garden seeds."

5. "Although beans are often planted in gardens as seed, yet, as a product, and a commodity in the market, they are not generally denominated as 'garden seeds,' any more than potatoes." *Robertson v. Salomon*, 130 U. S. 412, 9 Sup. Ct. Rep. 559, *per* Bradley, J.

Growing crops.

6. A "crop must be treated as growing, from the time the seed is deposited in the ground." *Wilkinson v. Ketler*, 69 Ala. 435, *per* Stone, J.

Limes.

7. "Limes are not vegetables." *Roche v. U. S.*, 116 Fed. Rep. 911.

Potatoes.

8. Potatoes are perishable articles. *Robinson v. Commonwealth Ins. Co.*, 3 Sumn. (U. S.) 220.

9. "Potatoes, like other vegetables, are in their nature perishable." *Williams v. Cole*, 16 Me. 207.

Aliens.

Right of Fiji to sue in United States court, see COURTS, 13.

ALIMONY.

See also DIVORCE, 18-20.

Recovery by state.

"It is impossible to conceive of alimony being due to the People of the State." *Barclay v. People*, 69 Ill. App. 517, *per* Shepard, J.

Amendments.

See PLEADING, 26-30.

ANIMALS.

See also CRUELTY TO ANIMALS.

Dead animals, see NUISANCES, 6.

Dog on railroad track, see RAILROAD COMPANIES, 9.

Elephants, see EVIDENCE, 33.

Exemption of, see HOMESTEAD AND EXEMPTIONS, 11-15, 17, 18.

Horse trading, see FRAUD, 1.

Necessity to milk cows on Sunday, see SUNDAY, 10.

Right of wife to keep dog without husband's consent, see HUSBAND AND WIFE, 17.

Right to select any name for animal, see NAMES, 3.

Suicide of, see SUICIDE, 2.

"Muzzle not the ox which treadeth out the corn."
Quoted by Coulter, J., in *Heebner v. Chave*, 5 Pa. St. 115.

"The price of the dog [is] an abomination in the sight of the Lord." *Quoted* by Hanna, J., in *Wilson v. State*, 16 Ind. 392.

"But if the ox were wont to push with his horns in time past, and it hath been testified to his owner, and he hath not kept him in, but that he hath killed a man or a woman, the ox shall be stoned and his owner shall be put to death." *Stumps v. Kelley*, 22 Ill. 140, *quoted* by Walker, J.

See also *Murphy v. Preston*, 5 Mackey (D. C.) 514.

"And for thy cattle, and for the beast that are in thy land, shall all the increase thereof be meat."
Quoted by Bell, J., in *De Blane v. Lynch*, 23 Tex. 25.

"'Tis sweet to hear the watch dog's honest bark

Bay deep-mouthed welcome as we draw near home."

Quoted by Russell, J., in *Woodbridge v. Marks*, 14 Misc. (N. Y.) 368, 36 N. Y. Supp. 81.

“ Let dogs delight to bark and bite,
For God hath made them so ;
Let bears and lions growl and fight,
For 'tis their nature to.”

Quoted by Allen, J., in *Wiley v. Slater*, 22 Barb. (N. Y.) 506.

In general.

1. “One cannot be expected to encounter a lion as he would a lamb.” *State v. Floyd*, 6 Jones L. (51 N. Car.) 392, *per* Pearson, C. J.

2. “Perversity and a disposition to have their own way seem to be a peculiarity of East Tennessee animals.” *Southern R. Co. v. Phillips*, 100 Tenn. 130, 42 S. W. Rep. 925, *per* Wilkes, J.

3. “For a dog to chase, frighten, annoy, or worry a cat is to do the cat a mischief.” *Ford v. Glennon* (Conn. 1901), 49 Atl. Rep. 189, *per* Baldwin, J.

4. “A locomotive and a mule may well pass over the same ground, so that they pass at different moments of time.” *Georgia R., etc., Co. v. Neely*, 56 Ga. 540, *per* Bleckley, J.

5. When minks are pursuing geese, the owner of the geese need not, before killing the minks, postpone and neglect his usual occupations, and examine zoological authorities on the question whether his geese are endangered in life or limb by the minks. *Aldrich v. Wright*, 53 N. H. 398, *per* Doe, J.

Birds and fowls.

6. Singing birds are "live animals." *Reiche v. Smythe*, 7 Blatchf. (U. S.) 235.

7. A chicken is a "tame, villatic fowl," and is useful. *State v. Neal*, 120 N. Car. 613, 27 S. E. Rep. 81, 58 Am. St. Rep. 810.

8. Game cocks are not apparatus or implements of gaming. *Coolidge v. Choate*, 11 Met. (Mass.) 79, *per* Wilde, J.

9. Where a cock chases a hen he is dealing with his lawful wife. *State v. Neely*, 74 N. Car. 425, 21 Am. Rep. 496, *per* Rodman, J., Bynum, J., *concurring*.

10. When a chicken cock drops his wing and takes after a hen, experience and observation assure that his purpose is sexual intercourse. "Whether the cock supposes that the hen is running by female instinct to increase the estimate of her favor and excite passion, or whether the cock intends to carry his purpose by force and against her will, is a question about which there may be some doubt, as for instance if she is a setting hen and 'makes fight,' not merely amorous resistance." *State v. Neeley*, 74 N. Car. 425, 21 Am. Rep. 496, *per* Pearson, C. J.

Cattle.

11. Bulls and cows are not steers. *Wyman v. Herard*, 9 Okla. 87, 59 Pac. Rep. 1009, *per* McAtee, J.

12. A calf is neither a heifer nor a steer. *Milligan v. Jefferson County*, 2 Mont. 543.

13. A steer "is, equally with a heifer, an animal of the cow kind." *Watson v. State*, 55 Ala. 150, 25 Am. Rep. 671.

14. "A steer is not a 'place.'" *People v. Fitzpatrick*, 80 Cal. 538, 22 Pac. Rep. 215, *per* McFarland, J.

15. The term "cattle" includes asses. *Ohio, etc., R. Co. v. Brubaker*, 47 Ill. 462.

16. The word "cattle" does not include either horses or mules. *Brown v. Bailey*, 4 Ala. 413.

17. The term "neat cattle" does not mean "nice" or "clean" cattle. *State v. Hoffman*, 53 Kan. 700, 37 Pac. Rep. 138.

18. In the Scriptures the word "cattle" ordinarily and usually embraces goats, notably in the contract between Laban and Jacob. *State v. Groves*, 119 N. Car. 822, 25 S. E. Rep. 819, *per* Clark, J.

19. The pedigrees, habits, and family relations of calves are matters not well defined in the law-books. *State v. Campbell*, 76 N. Car. 261, *per* Faircloth, J.

20. When a milch cow is lost she ought not to be penned up, but ought to be turned out and allowed to go home to her calf. *Medin v. Balch*, 102 Tenn. 710, 52 S. W. Rep. 140.

Dogs.

21. Dogs are not beasts. *U. S. v. Gideon*, 1 Minn. 292.

22. A dog is not a domestic animal. *State v. Harriman*, 75 Me. 562, 46 Am. Rep. 423.

23. "A man is presumed to be the keeper of his own dog." *Grant v. Ricker*, 74 Me. 487.

24. Dogs are "entitled to less legal regard and protection than more harmless and useful domestic animals." *Blair v. Forehand*, 100 Mass. 136, 97 Am. Dec. 82.

25. "A person is not bound to stand quietly and be bitten by a dog, nor to give him what might be called a fair fight among men." *Perry v. Phipps*, 10 Ired. L. (32 N. Car.) 259, 51 Am. Dec. 387, *per* Ruffin, C. J.

26. A dog is not a person, and hence is not entitled to kill another dog going at large without a license, under a statute authorizing "any person" to kill such dogs. *Heisrodt v. Hackett*, 34 Mich. 283, 22 Am. Rep. 529.

27. "The courtesies and hospitalities of dog life cannot well be regulated by the judicial tribunals of the land." *Wiley v. Slater*, 22 Barb. (N. Y.) 506, *per* Allen, J.

28. "It is plain that whether a dog is licensed or

not does not affect its character. A good dog is none the less so though it wear no collar." *Fox v. Mohawk*, etc., *Humane Soc.*, 25 N. Y. App. Div. 26, *per* Landon, J.

29. "Every dog is entitled to at least one worry" of sheep. *Fleeming v. Orr*, 2 Macq. H. L. 14, *per* Lord Cockburn.

30. "A sheepstealing dog, found lurking about, or roaming over a man's premises where sheep are kept, incurs the penalty of death." *Parrott v. Hartsfield*, 4 Dev. & B. L. (20 N. Car.) 110, 32 Am. Dec. 673, *per* Gaston, J.

31. The killing of a dog is not justified by his slight deflections from strict propriety. *Dodson v. Mock*, 4 Dev. & B. L. (20 N. Car.) 146, 32 Am. Dec. 677.

32. Inasmuch as dogs have no relatives competent to register their pedigrees, it is competent for such records to be kept by their owners, friends, and admirers. *Citizens' Rapid Transit Co. v. Dew*, 100 Tenn. 317, 45 S. W. Rep. 790, 66 Am. St. Rep. 754, *per* Wilkes, J.

33. "When we call to mind the small spaniel that saved the life of William of Orange and thus probably changed the current of modern history; and the faithful St. Bernards, which, after a storm has swept over the crests and sides of the Alps, start out in search of lost travelers, the claim that the nature of a

dog is essentially base, and that he should be left a prey to every vagabond who chooses to steal him, will not now receive ready assent." *Mullahy v. People*, 86 N. Y. 365, *per* Earl, J.

Hogs.

34. If a man's garden is rooted up and destroyed, he has the right to take some sow by the ear, and the proper sow to catch is the sow that has done the rooting. *Barger v. Hickory*, 130 N. Car. 550, 41 S. E. Rep. 708, *per* Douglas, J.

35. When a valuable Chester boar is allowed the range and is devoted to the service of the public by his liberal owner, he is in no sense a nuisance. *Bost v. Mingues*, 64 N. Car. 44.

36. "It is provoking to see an old sow trying to catch young chickens and snapping up one every now and then, in spite of the noises and energetic remonstrances of the hen, but it is not reason, and therefore not the law, that so valuable an animal may be destroyed to save the life of an unfledged chicken." *Morse v. Nixon*, 6 Jones L. (51 N. Car.) 293, *per* Pearson, C. J.

Horses, mules, asses, etc.

37. "In zoology, the horse is a species of the genus equus. This genus, according to modern naturalists, consists of six distinct though nearly allied species, namely, the horse, the dzeggithia, the ass, the quagga,

the mountain zebra, and the zebra of the plains." *Smythe v. State*, 17 Tex. App. 244, *per Willson*, J.

38. The mule "has no posterity to protect and keep alive his memory." *Mincey v. Bradburn*, 103 Tenn. 407, 56 S. W. Rep. 273, *per Wilkes*, J.

39. A mule comes nearer to being a horse than an ass, and is embraced in the term "horses and cattle" as used in a statute. *Toledo, etc., R. Co. v. Cole*, 50 Ill. 184.

40. "Mules do not 'increase, multiply, and replenish the earth' according to the ordinary laws of procreation and the Genesial command." *Stringfellow v. Sorrells*, 82 Tex. 277, 18 S. W. Rep. 689, *per Marr*, J.

41. Where a stallion has an "elongated pedigree" the questions whether "it made him sag to carry it," and whether "his legs were puffed on account thereof" are peculiarly for the jury, and not for the court. *Lucas v. Burlington, etc., R. Co.*, 112 Iowa 594, 84 N. W. Rep. 673, *per Sherwin*, J.

42. "As a rule, a jack is kept for one purpose only, and that is the propagation of his own species and mules. He has a loud, discordant bray, and, as counsel say, frequently 'makes himself heard, regardless of hearers, occasions, or solemnities.' He is not a desirable neighbor. The purpose for which he is kept, his frequent and discordant brays, and the asso-

ciation connected with him bring the keeping of him in a populous city or town 'within the legal notion of a nuisance.''' *Ex p. Foote*, 70 Ark. 12, 65 S. W. Rep. 706.

Snakes.

43. Trained snakes are "implements, instruments, and tools of trade." *Magnon v. U. S.*, 66 Fed. Rep. 151.

Wild beasts.

44. A wolf in sheep's clothing is not a sheep, but a wolf. *U. S. v. Shapleigh* (C. C. A.), 54 Fed. Rep. 126.

45. A "blind tiger" is a place where intoxicating liquor is sold in violation of law. *Schulze v. Jalonick*, 18 Tex. Civ. App. 296.

Annulment of Marriage.

-- See DIVORCE.

Answer.

See PLEADING, 19-24.

ANTHROPOLOGY.

See also INDIANS; NEGROES.

Frenchmen.

1. A typical Frenchman is procrastinating, eccentric, irritating, impulsive, improvident, and irascible,

but generous, confiding, and hopeful. *De Chambrun v. Schermerhorn*, 59 Fed. Rep. 504, *per* Coxe, J.

Indians.

2. A Chinaman is an Indian. *People v. Hall*, 4 Cal. 399; *Speer v. See Yup Co.*, 13 Cal. 73.

3. A Turk is not an Indian. *People v. Elyea*, 14 Cal. 145.

Negroes.

4. "Simply because a person is a negro, he is not to be necessarily deemed dangerous." *Savannah, etc., R. Co. v. Boyle*, 115 Ga. 836, 42 S. E. Rep. 242, *per* Cobb, J.

Apothecaries.

See DRUGGISTS.

APPEAL AND ERROR.

Record in murder case, see HOMICIDE, 10.

In general.

1. The appellate court will not allow a judgment to be ambushed. *Swindle v. Poore*, 59 Ga. 336, *per* Bleckley, J.

2. "Appellate courts are not devised as aids to counsel who either fail to properly prepare for trial, or to properly try their cases." *Schram v. Rudnick*, 76 N. Y. Supp. 891, *per* Greenbaum, J.

Parties.

3. If the case can be tried without certain persons as parties it can be reviewed without them. *Fouche v. Harrison*, 78 Ga. 359, 3 S. E. Rep. 330.

Bills of exceptions.

4. It is not the proper practice to file one of the modern self-made bills of exceptions which is the joint production of the official stenographer and a compositor in a printing and publishing office of a newspaper. *Linsday v. People*, 63 N. Y. 143, *per Allen, J.*

Assignment of errors.

5. An assignment of error is not an assignment of ignorance. *Sawdey v. Spokane Falls, etc., R. Co.*, 27 Wash. 536, 67 Pac. Rep. 1094.

6. The appellant's counsel must assign errors giving reasons for the faith that is in him. *Grimm v. Washburn*, 100 Wis. 229, 75 N. W. Rep. 984.

Record.

7. On appeal it is not sufficient that God knows a thing, but the record must show it. *Pence v. Lemp* (Idaho 1895), 43 Pac. Rep. 75.

8. A judge's manner and accent cannot be made a part of the record. *State v. Kerns*, 47 W. Va. 266, 34 S. E. Rep. 734.

9. An appellate court cannot consider the trial

judge's tone of voice or expression of countenance. *Territory v. O'Donnell*, 4 N. Mex. 66, 12 Pac. Rep. 743, *quoting* Parker, C. J., in *Com. v. Child*, 10 Pick. (Mass.) 253.

10. Where the record is "a swarming hive of professional industry and fecundity," it may be said that a "skeleton in one's closet is nothing to such a record in one's trunk in full view of the mountains" among which one is supposed to be taking his vacation. *Fouche v. Harrison*, 78 Ga. 359, 3 S. E. Rep. 330, *per* Bleckley, C. J.

Brief of evidence.

11. The following stenographic reports of the testimony in an action for trespass is not a brief of evidence : "Q. George Washington, if he was living, with his little hatchet could mark them, couldn't he? A. Yes sir, I suppose so." p. 106. "By the court: What is the name of the creek? A. Bob O'Sheely. Q. Do you know how it is spelled? A. No sir, I don't know as I ever saw it spelled." p. 163. "By the court: Did you ever eat any mulberries off that tree? A. No, sir, I never ate any mulberries off that tree in my life." p. 171. "By Mr. Alexander: Did that tree bear mulberries? A. I think it did. Q. Pretty fair eating? A. Pretty good, I think. Q. What were they worth a quart? A. We didn't sell them by the peck, quart, or gallon either. We just ate all we

got." p. 173. *Mehaffey v. Hambrick*, 83 Ga. 597, 10 S. E. Rep. 274.

Review.

12. An appellate court should hesitate to disturb a finding of fact, because the trial court had in its presence the living thing, whereas the appellate court has but a dead image of it. *Dutton v. State*, 92 Ga. 14, 18 S. E. Rep. 545, *per* Bleckley, C. J.

13. Where in a suit to set aside a fraudulent conveyance the trial lasts twenty-one days and results in eight hundred pages of record, and during such time the jury lived and breathed under an atmospheric pressure of fraud, and fraud is found, there would seem to be some presumption that some evidence had been introduced in the case tending to support the findings. *Merchants' Nat. Bank v. Greenhood*, 16 Mont. 395, 41 Pac. Rep. 250, 851.

Reversible errors.

14. It is ground for reversal that the trial court erroneously decided a question "as transparent as the soup of which *Oliver Twist* implored an additional supply." *Searle v. Adams*, 3 Kan. 515, 89 Am. Dec. 598, *per* Crozier, C. J.

15. A judgment of outlawry for not appearing to answer an indictment for high treason may be reversed after the lapse of one hundred and sixteen years on a writ of error sued out by a co-heir of the outlaw, where

it does not appear by the record that proclamations have been made or that a writ of proclamation had been issued. *Tynte v. Reg*, 7 Q. B. 216, 53 E. C. L. 216.

16. Many steps in the reasoning of the trial judge may be defective and still his conclusion be correct, and the judgment may be affirmed upon a theory of the case which did not occur to the court that rendered it.

“The pupil of impulse, it forc'd him along,
His conduct still right, with his argument wrong;
Still aiming at honor, yet fearing to roam,
The coachman was tipsy, the chariot drove home.”

Lee v. Porter, 63 Ga. 345, *per* Bleckley, J.

Harmless errors.

17. A judgment will not be reversed because the law has been rightly laid before the jury by any one. *People v. Brown*, 53 Mich. 531, 19 N. W. Rep. 172.

Objections not raised below.

18. On appeal a point which appears in its virgin state, wearing all its maiden blushes, is out of place. *Cleveland v. Chambliss*, 64 Ga. 352, *per* Bleckley, J.

Judgment on appeal.

19. Where thrice an unquiet case has materialized before an appellate court, judgment will be rendered

with the hope that its perturbed spirit will enter into unbroken rest. *Phillips v. Atlanta*, 87 Ga. 62, 13 S. E. Rep. 201.

Opinion of appellate court.

20. Where a case, by reason of its bulk and complexity, is a "separate science," the court will not interrupt its current business to write such an opinion as would be necessary to do it full justice. *McLaren v. Clark*, 62 Ga. 106, *per* Bleckley, J.

Rehearing.

21. It is a terror to the upright judge to be charged in a petition for rehearing with deciding wrong and although the court will not complain of being compelled to demonstrate the correctness of its decision, it will expect counsel to apply the same rule to themselves and demonstrate that they are wrong. *Carmel Nat. Gas, etc., Co. v. Small*, 150 Ind. 427, 47 N. E. Rep. 11, 50 N. E. Rep. 476.

22. On a petition for a rehearing the attorney general of the state should not ridicule any of the provisions of the constitution, or speak of them as insignificant, or in the petition use this language: "We admit that the constitution of the state is surrounded with a halo of sanctity and solemnity, a great part of which is fictitious." *Cohn v. Kingsley* (Idaho 1897), 49 Pac. Rep. 985.

APPEARANCE.

By dignified freeman.

“Our sturdy ancestors held it beneath the condition of a freeman to appear at the return day of the writ. But those good old days of ease and indulgence are gone forever.” *Dacy v. State*, 17 Ga. 439, *per Lumpkin, J.*

ARBITRATION AND AWARD.

What constitutes good award.

“The very definition of a good award is that it gives dissatisfaction to both parties.” *Goodman v. Sayers*, 2 Jac. & W. 249, *per Plumer, M. R.*

ARCHITECTURE.

Construction of roof.

“When it is shown that the roof of a house, without gutters or other obstructions, is sloping and projects over an adjoining building, the court may well conclude that the drip in time of rains will fall on such adjacent building.” *Hicks v. Silliman*, 93 Ill. 255, *per Mulkey, J.*

ARGUMENT OF COUNSEL.

See also BRIEFS.

“The wind bloweth where it listeth, and thou hearest the sound thereof, but canst not tell whence it cometh and whither it goeth.” *Quoted by Biddle, J., in Stein v. Hauck*, 56 Ind. 65, 26 Am. Rep. 10.

“Drown the stage in tears,
Make mad the guilty and appall the free,
Confound the ignorant, and amaze, indeed,
The very faculties of eyes and ears.”

Quoted by Weaver, J., in State v. Burns (Iowa 1903), 94 N. W. Rep. 238.

In general.

1. “Anything may be argued, no doubt.” *In re Imperial Mercantile Credit Assoc., L. R. 19 Eq. 588, per Sir James Bacon, V. C.*

2. It is needless to make the speech long because the case is weak. *Sparks v. East Tennessee, etc., R. Co., 82 Ga. 156, 8 S. E. Rep. 424, per Bleckley, C. J.*

3. “Any argument may be supported by references to reported cases.” *In re Imperial Mercantile Credit Assoc., L. R. 19 Eq. 588, per Sir James Bacon, V. C.*

4. “Stored away in the property room of the profession are moving pictures in infinite variety, from which every lawyer is expected to freely draw on all proper occasions. They give zest and point to the declamation, relieve the tediousness of the juror’s duties, and please the audience, but are not often effective in securing unjust verdicts.” *State v. Burns (Iowa 1903), 94 N. W. Rep. 238, per Weaver, J.*

Right to have case argued.

5. "Argument is not only a right, but a material one. It is not a mere ornamental fringe, hung upon the border of a trial. Trial, under our system, is a co-operation of minds—a grave and serious consultation over what should be done and how the end should be accomplished. The attorneys in the cause are not mere carriers to bring in materials for constructing the edifice; they have a right, as representing the parties, to suggest where every important stone should be laid, and to assign reasons, drawn from legitimate sources, in support of their suggestions. Their reasons may be good or bad, but such as they are they should be heard and considered." Van Dyke *v.* Martin, 55 Ga. 466, *per* Bleckley, J.

6. "Even when the merits are clearly against the losing party, he should have such mental satisfaction as he could derive from having finished his speech. He should not be slaughtered with his address warm in his bosom, alive and undelivered. His case being finally and forever lost, with his argument unheard, he would feel perhaps, and sometimes justly feel, that the outrage of deciding without hearing him was greater, far greater, than the calamity of the adverse decision itself. He might get justice, but with it a wound from the court more painful than any justice which the court could administer; for it is not impossible that a suppressed speech may occasion more men-

tal torture than a lost case." Early *v. Oliver*, 63 Ga. 11, *per* Bleckley, J.

Duty of court to listen and comprehend.

7. "There is no law or rule of practice which makes it reversible error for the court to fail to hear and comprehend the argument of counsel. The most attentive and observant court is not always able to accomplish that desirable end, even when the argument is addressed to itself." *State v. Burns* (Iowa 1903), 94 N. W. Rep. 240, *per* Weaver, J.

Right of counsel to lie on floor.

8. Counsel may, in the discretion of the court, be permitted to lie down on the floor and hollo at the top of his voice. *Owens v. Com.* (Ky. 1900), 58 S. W. Rep. 422.

Right of counsel to shed tears.

9. Counsel in arguing a case to the jury have the right to shed tears, and if they have them at their command it may be their professional duty to shed them. *Ferguson v. Moore*, 98 Tenn. 342, 39 S. W. Rep. 341.

Bucking up against authorities.

10. "It is sometimes easier to ignore a long array of pointed and pertinent authorities than to meet them and overthrow them by argument." *State v. Thayer*, 158 Mo. 36, 58 S. W. Rep. 12, *per* Sherwood, J.

Improper argument.

11. A vindictive attack of counsel which might pass muster in a political stump speech will not necessarily be accepted as argument. *Baker v. Scott* (Idaho 1895), 43 Pac. Rep. 76, *per* Huston, J.

12. Where a conveyance made by Jews is attacked as fraudulent it is error to refer to them as "men of Jerusalem," and intimate that Jews are necessarily dishonest. *Cluett v. Rosenthal*, 100 Mich. 193, 58 N. W. Rep. 1009, 43 Am. St. Rep. 446.

13. "Judges, like other men, may admire the pungent language of the distinguished, though unknown, Junius; the cutting satires and scorching invectives of the 'Great Sub Umbra.' But in tribunals of justice, such emanations are inappropriate and out of place." *State v. Clements*, 32 Me. 279, *per* Tenney, J.

14. A judgment for the plaintiff, in an action for negligence, will be reversed because of a declaration by the plaintiff's counsel that "if the railroad company were charged with the killing of Christ, * * * they would come into court and plead that Christ was guilty of contributory negligence." *St. Louis, etc., R. Co. v. McLendon* (Tex. Civ. App. 1894), 26 S. W. Rep. 307.

Reading Bible to jury.

15. In an action for libel (the libel consisting of a charge that the plaintiff is a drunkard) the plain-

tiff's attorneys may read to the jury the following verse from the Bible: "No drunkard shall inherit the kingdom of heaven." *Tobin v. Sykes* (Supm. Ct. Gen. T.), 54 N. Y. St. Rep. 399, 24 N. Y. Supp. 943.

Objections waived.

16. Counsel, speaking of the plaintiff's chief witness, said: "This man Bouton is a star witness for Marvin in all these cases. He would swear a hole through a two-inch plank." *Held*, that in the absence of seasonable objection there was no reversible error. *Marvin v. Ruhmohr*, 115 Mich. 687, 74 N. W. Rep. 208.

17. Counsel for the state on a prosecution for murder, said: "That Jim McBride, a witness for defendant, had lied like a tombstone; that they lied more than any other inanimate objects; but that there was one that did not lie, and it was the plain shaft that was reared to poor, humble Barney Gray, back in old Mississippi, and which had upon it, 'Murdered at Annona, Texas, on October 22nd, 1898,'—if the facts be true." *Held*, that counsel should have been reprimanded, but that the error was not reversible because proper and timely objection was not made by the defendant. *Warthan v. State*, 41 Tex. Crim. 385, 55 S. W. Rep. 55.

Arithmetic.

See MATHEMATICS.

ARMY.

Women as soldiers, see WOMEN, 16.

Who are soldiers.

The functions, employments, duties, and qualifications of "under-cooks of African descent" enlisted under Act Cong. March, 1863, § 10, are not those belonging and appertaining to soldiers. Pay of "Under-Cooks of African Descent," 11 Op. Atty. Gen. 193, *per* Attorney General Speed.

ARREST.**What constitutes.**

Putting one out of the house is not an arrest. *Huffman v. State*, 95 Ga. 469, 20 S. E. Rep. 216, *per* Bleckley, C. J.

ASSAULT AND BATTERY.

By husband upon wife, see HUSBAND AND WIFE, 12.

Parent upon child, see PARENT AND CHILD, 8.

Indictment for, see INDICTMENT, 4.

With intent to commit rape, see RAPE, 2.

In general.

1. "It is not always the one who does the shouting that does the shooting." *People v. Maggio* (App. Div. 1902), 77 N. Y. Supp. 204, *per* Hirschberg, J.

Consent of person assaulted.

2. "If a strong man has a weak one in his power, and gives his victim the choice of being kicked or

cuffed, he cannot defend his battery on the ground that the injured man consented." *Hellman v. Shoulters*, 114 Cal. 136, 44 Pac. Rep. 915, 45 Pac. Rep. 1057, *per* Temple, J.

Mollitur manus imposuit.

3. Where an unauthorized person forcibly throws a woman's freshly washed and ironed clothes on the floor, it is a question for the jury whether she could lay hands on him more gently than by means of a baseball bat applied to the back of his head. *State v. Goode*, 130 N. Car. 651, 41 S. E. Rep. 3.

Aggravated assault and battery.

4. Defendant struck the injured party several blows with his fist, threw him down, and got upon him with his knees, etc. *Held*, a simple rather than an aggravated assault and battery, as the means used were not calculated to inflict great bodily injury. *Buchanan v. State* (Tex. App. 1890), 13 S. W. Rep. 1000.

Assault upon woman.

5. "It is difficult to conceive how a man who has promised upon the altar to love, comfort, honor, and keep a woman can lay rude and violent hands upon her without having malice and cruelty in his heart." *State v. Oliver*, 70 N. Car. 60, *per* Settle, J.

6. Even if it is conceded that the looks of a woman's eyes show that she is not "of private or domestic habits," such fact does not authorize a man to shoot

her as she flees from him. *Meyer v. State* (Tex. Crim. App. 1897), 41 S. W. Rep. 632.

Celebrating Christmas.

7. An assault is none the less such because it is committed to have fun during the merry season of Christmas. *Crumbley v. State*, 61 Ga. 582.

Shooting friend for amusement.

8. "Those who shoot at their friends for amusement ought to warn them first that it is mere sport." *Crumbley v. State*, 61 Ga. 582, *per* Bleckley, J.

Justification.

9. Where a would-be seducer of a married woman, having previously insulted her and been threatened with punishment by her husband, afterwards seats himself at a hotel breakfast table within two chairs of the woman and is shot at by the woman's husband, it is unfortunate if the husband misses him. *State v. Grugin*, 147 Mo. 39, 47 S. W. Rep. 1058, 71 Am. St. Rep. 553, *per* Sherwood, J., *commenting* on *Biggs v. State*, 29 Ga. 723, 76 Am. Dec. 630.

Self-defense.

10. He who attacks with a double-barrel may be resisted just as if he shot with a single barrel. *Clary v. Haines*, 61 Ga. 520.

Asses.

See ANIMALS, 37-42.

ASSIGNMENT FOR BENEFIT OF CREDITORS.

See ACTIONS, 2.

Case of Ananias and Sapphira.

“It seems probable that the idea of the courts as to general assignments for creditors was derived from the dealing with the luckless Ananias and Sapphira, who, having undertaken to sell their possessions and bring the proceeds to the common treasury, after selling their land, reported only a part, and withheld the balance of the money received, with terrible results to both, as recorded in Acts v.” *Selleck v. Pollock*, 69 Miss. 870, 13 So. Rep. 248, *per* Campbell, C. J.

Assignment of Errors.

See APPEAL AND ERROR, 5, 6.

ASTROLOGY.**Time for castrating mule.**

In an action for castrating a mule the admission in evidence of an almanac to prove that at the time of the castration the moon was in a certain sign or constellation of the zodiac commonly known as the sign of the brain, is not reversible error, when it does not appear that the jurors were believers in astrological influences, or that it was shown from the almanac that damage would follow castration when the moon was in such sign or constellation. *Norris v. Banta*, 21 Tex. 427.

ASTRONOMY.**Orbit of earth.**

“The orbit of the earth depends upon the exquisite adjustment of two conflicting forces—the centripetal power of attraction, and the centrifugal force of momentum. The preponderance of either would lead to inevitable destruction.” *Chappell v. Ellis*, 123 N. Car. 259, 31 S. E. Rep. 709, 68 Am. St. Rep. 822, *per* Douglas, J.

ASYLUMS.

See also **INSANE PERSONS**, 14.

Confinement of sane persons in.

“Undoubtedly a lunatic asylum is not the proper place for the confinement of sane persons.” *Statham v. Blackford*, 89 Va. 771, 17 S. E. Rep. 233, *per* Lewis, P.

ATTACHMENT.**Levy on pair of shoes.**

The levy of an attachment on a pair of shoes, if they are of any value, is valid. *Thornton v. Winter*, 9 Ala. 613.

ATTORNEY AND CLIENT.

See also **LAWYERS**.

In general.

1. A barroom loafer is an unfortunate selection for a legal adviser. *Hayes v. U. S.*, 32 Fed. Rep. 662, *per* Brewer, J.

2. The professional statements of counsel are to be regarded as affidavits. *Rice v. Griffith*, 9 Iowa 539.

3. The fact that a lawyer advises foolish conduct does not relieve it of its foolishness. *Hanscom v. Marston*, 82 Me. 288, 19 Atl. Rep. 460, *per Emery, J.*

4. Where a lawyer is intrusted with money to invest on mortgage on his client's behalf he is not intrusted with it for "safe custody" within 24 & 25 Vict. c. 96, § 76. *Reg. v. Newman*, L. R. 8 Q. B. Div. 706.

How relation established.

5. "It is common knowledge that one of the first things an attorney does when a client seeks to secure his professional services is to establish the relation of attorney and client. All understand how this is accomplished." *In re Smith*, 108 Fed. Rep. 39, *per Purnell, J.*

Nature of clients.

6. It is not the saints of the world who chiefly give employment to the legal profession. *In re Goodell*, 39 Wis. 232, 20 Am. Rep. 42, *per Ryan, C. J.*

Authority of attorney to bind client.

7. However much married a woman may be she is bound by the acts of her counsel. *Williams v. Simmons*, 79 Ga. 649, 7 S. E. Rep. 133.

8. An attorney has no implied authority to take wood in payment of a promissory note in his hands for collection. *Pitkin v. Harris*, 69 Mich. 133, 37 N. W. Rep. 61.

Compensation of attorney.

9. "Lawyers are in the habit of charging their clients for services." *Davis v. Dodson*, 95 Ga. 718, 22 S. E. Rep. 645, 51 Am. St. Rep. 108, *per Lumpkin, J.*

10. "There can be no litigation without lawyers; no lawyers without fees; no fees from an insolvent." *Fry v. Calder*, 74 Ga. 7, *per Jackson, C. J.*

11. The quality of the advice of counsel may be such as to warrant the presumption that it was obtained gratis. *Treadwell v. Beauchamp*, 82 Ga. 736, 9 S. E. Rep. 1040.

12. "It is the right of an attorney acting for himself alone, as a matter of charity or friendship, to collect a paper for another without charging a fee for his services." *Davis v. Dodson*, 95 Ga. 718, 22 S. E. Rep. 645, 51 Am. St. Rep. 108, *per Lumpkin, J.*

13. In determining the right of an attorney to recover fees, "on this side the Atlantic, and in an age when the greatest poets or novelists are willing to confess that they toil 'for gain, not glory,' it is ridiculous to attempt to perpetuate a monstrous legal fiction, by which the hard-working lawyers of our

day, toiling till midnight in their offices, are to be regarded in the eye of the law in the light of the patrician jurisconsults of ancient Rome, when

———dulce dici fuit et solemne reclusa,
Mane domo vigilare, clienti promeri jura ;

and who at daybreak received the early visits of their humble and dependent clients, and pronounced with mysterious brevity the oracles of the law.” *Adams v. Stevens*, 26 Wend. (N. Y.) 451, *per* Verplanck, J.

Unprofessional conduct.

14. For an attorney to refuse to pay money over to his client on the ground that to do so would be inconvenient, indicates unprofessional conduct. *In re Neville* (Supr. Ct. App. D.), 75 N. Y. Supp. 588.

BAGGAGE.

What constitutes.

A sacque, muff, and two napkin rings do not constitute part of a traveling gentleman's baggage, even though he is in ill health. *Chicago, etc., R. Co. v. Boyce*, 73 Ill. 510, 24 Am. Rep. 268.

BAIL.

Right of bail to pull string.

“The bail have their principal always upon a string, and may pull the string whenever they please.”

Anonymous, 6 Mod. 231, *quoted* in Com. v. Brickett, 8 Pick. (Mass.) 138.

BAILMENTS.

See also PLEDGES ; WAREHOUSEMEN.

Barber as bailee of customer's hat, see BARBERS, 4.

Care required of bailee.

1. A bailee is required to take greater care of a bag of gold than of a bag of apples. Tracy v. Wood, 3 Mason (U. S.) 132.

Liability of bailee for destruction by fire.

2. A lessee of fire extinguishers is liable for their value where they are destroyed by fire without his negligence. Rapid Safety Fire Extinguisher Co. v. Hay-Budden Mfg. Co. (Supm. Ct. App. T.), 75 N. Y. Supp. 1008.

BANKRUPTCY.

Produced by marriage, see MARRIAGE, 4.

In general.

1. “ ‘Your money,’ not ‘your life,’ is the demand made by the bankrupt act.” Holland v. Heyman, 60 Ga. 174, *per* Bleckley, J.

2. “It is a matter of common knowledge that persons who are hopelessly insolvent will frequently cling to the belief that they can pay up if only allowed a

little time, yet, if time be allowed them, they only become more heavily involved." *In re Keller*, 109 Fed. Rep. 118, *per Shiras*, J.

Business of bankrupt.

3. Where a corporation is engaged in the business of keeping a boarding stable, and boards horses and cares for wagons, harness, etc., it is principally engaged in "trading or commercial pursuits" within Act Cong., 1898, § 4 b. *In re Morton Boarding Stables*, 108 Fed. Rep. 791, 5 Am. Bankr. Rep. 763, *following In re Odell*, 9 Ben. (U. S.) 209, 17 Nat. Bankr. Reg. 73, 18 Fed. Cas. No. 10,426.

Meeting of creditors.

4. At the first meeting of creditors the court, judge or referee is not authorized to "count a quorum." *In re Eagles*, 99 Fed. Rep. 695, *per Purnell*, J.

Property belonging to estate.

5. "A bankrupt's wife is not 'property belonging to his estate in bankruptcy.'" *In re Goodale*, 109 Fed. Rep. 783, *per Coxe*, J.

Allowance to bankrupt for spree.

6. If a bankrupt "after the failure of his business chose to go upon a spree, nobody is surprised; but the court is not obliged to allow him all the money that he expends in that spree." *In re Tudor*, 100 Fed. Rep. 796, *per Hallett*, J.

Discharge.

7. The discovery of microscopic germs of dishonesty is not a sufficient ground for refusing a discharge in bankruptcy. *In re Covington*, 110 Fed. Rep. 143, 6 Am. Bank. Rep. 373, *per* Purnell, J.

BANKS AND BANKING.

See also RECEIVERS, 3.

Checks drawn by cashier's wife.

1. A bank cashier obtaining money to build a residence by checks drawn on the bank by his wife, simply obtains a loan from the bank in the usual way. *McIlroy Banking Co. v. Dickson*, 66 Ark. 327, 50 S. W. Rep. 868.

Banks and farmers.

2. "It is not thought an infringement of the ordinary policy of the times to surrender the uneducated farmer to the protecting care of the educated banker. The Law demands it, Equity sanctions it, and blind Justice weeps and pleads in vain." *Call v. Tygarts Valley Bank*, 50 W. Va. 597, 40 S. E. Rep. 380, *per* Dent, J.

Demand after doors closed.

3. After a bank has closed its doors a demand need not be made upon it by shouting through the key-hole. *Wheeler v. Moscow Commercial Bank* (Idaho 1896), 46 Pac. Rep. 830, *per* Huston, J.

BARBERS.**Nature of barber's work.**

1. For a barber to shave customers is not a work of mercy. *Phillips v. Innes*, 4 Cl. & F. 234, *per* Lord Cottenham, C.

2. Nor is it a work of charity. *Ex p. Kennedy* (Tex. Crim. App. 1900), 58 S. W. Rep. 129, *per* Henderson, J.

3. Frequently the impression made by a barber on a customer's face "is similar to that made by a carpenter with his saw," and a barber is a mechanic, although "to look at him, the barber appears to be a professional gentleman." *Terry v. McDaniel*, 103 Tenn. 415, 53 S. W. Rep. 732, *per* Wilkes, J.

Barber as bailee of hats.

4. A barber, while shaving a customer, is not bound to watch the latter's hat. *Dilberto v. Harris*, 95 Ga. 571, 23 S. E. Rep. 112, *per* Bleckley, C. J.

Baseball.

See DISTURBANCE OF THE PEACE.

BASTARDY.

Constitutional right to appropriate illegitimate children, see CONSTITUTIONAL LAW, 8.

K. John. "Sirrah, your brother is legitimate ;
Your father's wife did after wedlock bear him :
And, if she did play false, the fault was hers :
Which fault lies on the hazards of all husbands
That marry wives. Tell me, how if my brother,
Who, as you say, took pains to get this son,
Had of your father claimed this son for his ?
In sooth, good friend, your father might have kept
This calf, bred from his cow, from all the world."
—King John, Act 1, Scene 1.

Quoted by Walworth, C., in Van Aernam v. Van Aernam, 1 Barb. Ch (N. Y.) 375, and in part in In re Mills's Estate, 137 Cal. 298, 70 Pac. Rep. 91.

In general.

1. "Man with all his wisdom toils for heirs he knows not who." *Nevison v. Taylor, 8 N. J. L. 43, per Kirkpatrick, C. J.*

2. "Courts are familiar with the proneness of juries to find the man charged with the offense of bastardy to be guilty, when a mother, with a child in arms, avers that he is so." *Macal v. People, 55 Ill. App. 482, per Shepard, J.*

Twins.

3. Where a statute provides that the father of "any bastard child" shall be liable for its support, it is broad enough to cover bastard twins, and the father thereof is liable for the maintenance of both. *Hall v. Com., Hard. (Ky.) 486.*

Testimony of woman as to paternity.

4. "Circumstances may easily be imagined under which the testimony of a woman that a particular man is the father of her child would be the statement of a mere conjecture; not even having so many circumstances of probability as Falstaff narrated in first part of King Henry IV, Act II, Scene IV: 'That thou art my son, I have partly thy mother's word, partly my own opinion, but chiefly a villainous trick of thine eye and a foolish hanging of thy nether lip, that doth warrant me.'" *Macal v. People*, 55 Ill. App. 482, *per* Shepard, J.

"Expense of lying-in," etc.

5. Burial expenses cannot be allowed by the court in ascertaining "the expense of lying-in, and of nursing the child." *Harty v. Malloy*, 67 Conn. 339, 35 Atl. Rep. 259.

Battery.

• See ASSAULT AND BATTERY.

BENEFICIAL ASSOCIATIONS.

See also INSURANCE.

Right of member to benefits.

1. Where it is provided that a member shall be entitled to benefits if he is disabled by sickness from attending to his business, for such time as he is "confined to the house and under a physician's care," the

member, if otherwise entitled to benefits, may recover them for a time during which he exercised in his yard and on his front pavement and walked to his physician's office for treatment, such going out of doors being at the direction and request of his physician. *Columbian Relief Fund Assoc. v. Gross*, 25 Ind. App. 215, 57 N. E. Rep. 145.

Voluntary exposure to danger.

2. Speaking to a woman on the street is not a voluntary exposure to danger. *Mair v. Railway Passengers Assur. Co.*, 37 L. T. 356.

BICYCLES.

As necessities, see **INFANTS**, 3, 5.

Exemption of, see **HOMESTEAD AND EXEMPTIONS**, 19.

In general.

1. Riding a bicycle for health and enjoyment is not an occupation, nor is it necessarily dangerous to the public. *Ellis v. Frazier*, 38 Oregon 462, 63 Pac. Rep. 642.

Nature of.

2. "A bicycle is of but little use in wet weather or on frozen ground." *Richardson v. Danvers*, 176 Mass. 413, 57 N. E. Rep. 688, 50 L. R. A. 127, 79 Am. St. Rep. 320.

3. A bicycle is an "animal" within a statute denouncing the riding or driving of any "animal" upon

a sidewalk. *Com. v. Forrest*, 170 Pa. St. 40, 32 Atl. Rep. 652, 37 W. N. C. 19, *reversing* 3 Pa. Dist. Rep. 797.

4. A bicycle is not a carriage. *Williams v. Ellis*, L. R. 5 Q. B. Div. 175.

5. A person riding a bicycle on a highway at such a pace as to be dangerous to other travelers may be convicted of furiously driving a carriage under 5 & 6 Wm. IV, c. 50, § 78. *Taylor v. Goodwin*, L. R. 4 Q. B. Div. 228.

Lawfulness of riding.

6. "Bicycles are vehicles used now very extensively for convenience, recreation, pleasure, and business, and the riding of one upon the public highway in the ordinary manner, as is now done, is neither unlawful nor prohibited, and they cannot be banished because they were not ancient vehicles, and used in the Garden of Eden by Adam and Eve." *Thompson v. Dodge*, 58 Minn. 555, 60 N. W. Rep. 545, 49 Am. St. Rep. 533, *per* Buck, J.

"Bicycler's stop."

7. A "bicycler's stop," *i. e.*, circling on a bicycle round and round, is not the legal stop that is necessary before crossing a railroad track. *Robertson v. Pennsylvania R. Co.*, 180 Pa. St. 43, 36 Atl. Rep. 403, 1 Am. Neg. Rep. 166, 57 Am. St. Rep. 620.

BIGAMY.

See also HUSBAND AND WIFE, 19.

Commission of, as evidence of insanity, see INSANE PERSONS, 10.

Blundering seducer.

A married man, it seems, imagining himself to effect mere seduction, may blunder into bigamy. *Hayes v. People*, 25 N. Y. 390, 82 Am. Dec. 364.

BILLIARDS AND POOL.

See also EVIDENCE, 45.

Exemption of pool table, see HOMESTEAD AND EX-EMPTIONS, 20.

Two games distinguished.

1. An indictment for allowing a minor to play billiards is not supported by evidence that the game was pool played with billiard balls on a billiard table. *Squier v. State*, 66 Ind. 317.

Gambling games.

2. Playing the rub to determine which party shall pay for the use of the billiard table is not gaming, because the gain and loss between the parties is not such as to excite a spirit of cupidity. *People v. Sergeant*, 8 Cow. (N. Y.) 139.

Bills of Exceptions.

See APPEAL AND ERROR, 4.

Birds.

See **ANIMALS**.

BOARDING HOUSES.

See also **INNS AND INNKEEPERS**.

Obtaining board and lodging by fraud, see **FALSE PRETENCES**, 2.

Status of boarder.

One who lives in a boarding house, as a boarder, is not an inhabitant of such house. *Ullman v. State*, 1 Tex. App. 220, 28 Am. Rep. 405.

BOUNDARIES.**Expense of litigation concerning.**

1. "Litigation about line fences is one of the most expensive luxuries known to the law." *Kennedy v. Erdman*, 150 Pa. St. 427, 24 Atl. Rep. 643, *per Paxson*, C. J.

Curved lines.

2. "According to Hogarth, curved lines are more beautiful than straight, and there is no reason why parties may not measure land by them if they choose to do so." *Fratt v. Woodward*, 32 Cal. 219, 91 Am. Dec. 573, *per Sanderson*, J.

Measurements not made by surveyor.

3. It would seem that measurements of land "made by a baker attended by a tinsmith, under

the supervision of a lawyer," are not as reliable as those made by a surveyor. *Omensetter v. Kemper*, 6 Pa. Super. Ct. 309.

BREACH OF MARRIAGE PROMISE.

In general.

1. "It by no means follows, because a gentleman is the suitor of a lady, and visits her frequently, that a marriage engagement exists between them. If this were so, it would be dangerous for an unmarried man to pay attention to an unmarried woman." *Walmsley v. Robinson*, 63 Ill. 41, 14 Am. Rep. 111, *per Breese, J.*

Where woman is elderly.

2. There is fully as much culpability in breaking a promise of marriage made to an elderly woman as to a young woman. *Lohner v. Coldwell*, 15 Tex. Civ. App. 444, 39 S. W. Rep. 591.

BRIDGES.

What constitute.

1. A flat-bottomed boat connected with cables spanning a stream and moved or propelled back and forth across it by power supplied by a stationary engine on the bank is not a bridge. *Parrott v. Lawrence*, 2 Dill. (U. S.) 332.

Rights of drunken man on.

2. Even if a man is drunk he has the right to suppose that a bridge open to the use of the public and

under control of the county official will bear up his load in crossing it. *Ford v. Umatilla County*, 15 Oregon 313, 16 Pac. Rep. 33, *per* Thayer, J.

BRIEFS.

See also ARGUMENT OF COUNSEL.

Of evidence, see APPEAL AND ERROR, 11.

In general.

1. Although a brief may illustrate true eloquence—"the lightning of passion playing along the line of thought"—the court must content itself with "the ice-cold law, from which no friction will excite sparks." *Illinois, etc., R. Co. v. Johnson*, 77 Miss. 727, 28 So. Rep. 753.

"Indiscriminate hotchpot."

2. A brief should not consist of "an indiscriminate hotchpot discussion and dissertation upon law, mythology, Shakespeare, and the Bible." *Duncan v. Times-Mirror Co.* (Cal. 1898), 52 Pac. Rep. 651.

"Melodious alliteration."

3. In *Chicago, etc., R. Co. v. West Chicago St. R. Co.*, 63 Ill. App. 464, the brief of the plaintiff in error, with "melodious alliteration," characterized the defendant in error as a "midnight marauder." *Held*, that, as Pecksniff said about getting drunk, the brief was "very soothing." *Per* Gary, J.

Classical, but irrelevant.

4. The brief for the defendant in a prosecution for assault with intent to murder opened thus : “ When the mother of Achilles plunged him in the Stygian waters his body became invulnerable, except the heel by which she held him, and afterwards when he and Polyxena, the daughter of the King of Tróy, who were lovers, met in the Temple of Apollo to solemnize their marriage, Paris, the brother of Hector, lurking behind the image of Apollo, slew Achilles by shooting him in the heel with an arrow.” *Held*, that it was sufficiently striking to deserve mention, and intensely classical but irrelevant. *Gilbert v. State*, 90 Ga. 691, 16 S. E. Rep. 652.

BURIAL.**Right of burial.**

1. The right of burial “implies the right to be carried from the place where the body lies to the parish cemetery.” *Reg. v. Stewart*, 12 Ad. & El. 773, 40 E. C. L. 192.

Where woman aborts.

2. Where a woman aborts and the foetus is seven months old and dead, the physician in attendance may throw it into a furnace, incineration being as proper as inhumation. *State v. Kellogg*, 14 Mont. 426, 36 Pac. Rep. 957.

Funeral expenses.

3. A demand for mourning furnished to the widow

and family of a deceased person is not a "funeral expense." *Johnson v. Baker*, 2 C. & P. 207, 12 E. C. L. 92.

4. The expenses of a wake will be allowed as an item of funeral charges if nothing more provocative of hilarity than cheese, crackers, and tobacco is furnished to the guests and mourners. *Johnson's Estate*, 8 Pa. Co. Ct. 1.

5. An account for "goods, wares, and merchandise" which includes the item "Mass at church, \$20," "furnished to defendant at his special instance and request," is good in the absence of any objection to such item. *Sherman v. Nason*, 25 Mont. 283, 64 Pac. Rep. 768.

6. A charge for dinners and horse feed furnished to persons who attend the funeral of the decedent is not a proper and legitimate charge as part of the funeral expenses. *Shaeffer v. Shaeffer*, 54 Md. 679, 39 Am. Rep. 406.

Obituary notice.

7. "The children of a deceased person are not bound to have his mental weaknesses and failings set out in an obituary notice." *In re Hull* (Iowa 1902), 89 N. W. Rep. 979, *per McClain*, J.

Caption.

Of indictment, see INDICTMENTS, 3.

CARRIERS.

See also **BAGGAGE** ; **RAILROAD COMPANIES**.

Whether a carrier is a mechanic, see **HOMESTEAD AND EXEMPTIONS**, 8.

In general.

1. "Common carriers are not the censors of public or private morals." *Com. v. Western Union Tel. Co.* (Ky. 1901), 67 S. W. Rep. 59.

2. "The traveling public have some rights." *Pittsburg, etc., R. Co. v. Lyon*, 123 Pa. St. 140, 16 Atl. Rep. 607, 37 Am. & Eng. R. Cas. 231, 10 Am. St. Rep. 517, *per* Sterrett, J.

3. "Stage-drivers embrace all degrees of character, from the careful and worthy proprietor to the worthless vagabond." *Haviland v. Hayes*, 37 N. Y. 25, *per* Hunt, J.

Notices in ticket offices.

4. "In these days of hurry and bustle, passengers have little time to give to reading the notices exposed to their gaze in ticket offices and stations." *Georgia R. Co. v. Baldoni*, 115 Ga. 1013, 42 S. E. Rep. 364, *per* Simmons, C. J.

Time tables.

5. "The representations made by railway companies in their time tables cannot be treated as mere waste paper." *Denton v. Great Northern R.*, 5 El.

& Bl. 860, 85 E. C. L. 860, *per* Lord Campbell, C. J. *Quoted* in *Gordon v. Manchester, etc.*, R. Co., 52 N. H. 596, 13 Am. Rep. 97.

Transportation of men as freight.

6. "If men are to be transported as freight upon railways and rivers, and their carriers held to the responsibility of insurers, they should suffer themselves to be handled as freight, and wait in their seats till they can be landed upon the platform by the agents of the transporters." *Pabst v. Baltimore, etc.*, R. Co., 2 MacArthur (D. C.) 42, *per* Wylie, J.

Women passengers.

7. "When a woman passenger says she was injured in the attempt by a railway to pass one car by another upon a single track, the railway will always have to pay for it." *Pittsburg, etc.*, R. Co. *v.* Story, 63 Ill. App. 239, *per* Gary, J.

8. "A fleshy woman has a right to ride on a train and to have a valise and parcels, and she is entitled to more time for alighting than might be required for a foot-racer or a greyhound." *Pierce v. Gray*, 63 Ill. App. 158, *per* Scofield, J.

Morals of passengers.

9. It would seem that if whores are to be excluded from a "ladies'" car, whoremongers should be excluded from a "gentlemen's" car. *Brown v. Memphis, etc.*, R. Co., 7 Fed. Rep. 51.

Ejection of passengers.

10. Where a passenger boards a train "with several drinks in his bosom and a pistol in his possession," and uses profane and abusive language, the conductor has a right to eject him. *Peavy v. Georgia Railroad & Banking Co.*, 81 Ga. 485, 8 S. E. Rep. 70, 12 Am. St. Rep. 334.

Contributory negligence.

11. It is reckless for a passenger to ride with his body half out of a car window. *Spencer v. Milwaukee, etc., R. Co.*, 17 Wis. 487, 84 Am. Dec. 758.

Delay—Act of God.

12. A fall of heavy dew which delays a train is not an act of God such as will relieve the railroad company from liability for the delay; and it would seem that the railroad company would also be liable if delay were occasioned by "mountain dew." *Missouri, etc., R. Co. v. Truskett*, 2 Indian Ter. 633, 53 S. W. Rep. 444, *per* Townsend, J.

Connecting carriers.

13. When goods are delivered for shipment by connecting carriers, "the consignor or consignee cannot be expected to accompany the goods over the whole line of transportation, watch over them, and be prepared to prove when a loss occurred and which of the carriers is liable." *Southern Exp. Co. v. Hess*, 53 Ala. 19, *per* Brickell, C. J.

CARRYING WEAPONS.

Right to carry to church, see CONSTITUTIONAL LAW, 11.

Deadly combination.

1. An open knife, a bottle of whisky, and a razor are certainly a deadly combination. *Claiborne v. Chesapeake, etc., R. Co.*, 46 W. Va. 363, 33 S. E. Rep. 262, *per* Dent, J.

Chasing bear with pistol.

2. When a person borrows a pistol for the purpose of joining in a chase for a bear, returning the pistol soon after the return from the chase, he is not guilty of going armed in the sense of the law. *Moorefield v. State*, 5 Lea (73 Tenn.) 348.

Castration.

Of mules, see ASTROLOGY.

Women, see MAYHEM.

Cattle.

See ANIMALS, 11-20.

Certiorari.

See APPEAL AND ERROR.

Effect of dismissal of, see DISMISSAL, 2.

Challenges.

See DUELLING.

Of jurors, see JURY, 12.

CHARITIES.**What is charity.**

1. "Mere benevolence is not charity." *In re Wall*, 42 Ch. D. 510, *per Kay*, J.

Certainty.

2. A trust established in behalf "of the worthy, deserving, poor, white, American, Protestant, Democratic widows and orphans residing in the town of Bridgeport, Connecticut," is not void for uncertainty. *Beardsley v. Bridgeport*, 53 Conn. 489, 3 Atl. Rep. 557, 55 Am. Rep. 152.

CHATTEL MORTGAGES.**Stating occupation of mortgagor.**

1. A chattel mortgage which describes the mortgagors as "late merchants of Pine Grove" sufficiently complies with Act Cal. 1857, requiring the profession, trade, or occupation of the mortgagor to be set forth, as it is equivalent to a statement that they are not engaged in any business and have no occupation. *Ede v. Johnson*, 15 Cal. 53.

What property covered.

2. It seems that a chattel mortgage on all "clothing" and "furnishing goods" does not cover boots, shoes, slippers, rubbers, and arctics. *Clement v. Hartzell*, 57 Kan. 482, 46 Pac. Rep. 961.

3. A mortgage of all the "furniture" now in

and belonging to a specified house may include pictures, pianos, and billiard tables therein. *Sumner v. Blakslee*, 59 N. H. 242, 47 Am. Rep. 196.

Checks.

See **BANKS AND BANKING**, 1.

CHINESE.

"Laborers"—Exclusion Act.

1. A Chinese prostitute is a "manual laborer." *Lee Ah Yin v. U. S.* (U. S. C. C. App.), 116 Fed. Rep. 614, *per* Gilbert, J.

2. Chinese gamblers and highbinders are "Chinese laborers" within the meaning of the Exclusion Act. *U. S. v. Ah Fawn*, 57 Fed. Rep. 591.

3. A Chinese merchant upon being sent to the penitentiary ceases to be a merchant and becomes a "laborer" within the meaning of the Exclusion Act. *U. S. v. Wong Ah Hung*, 62 Fed. Rep. 1005.

Citizenship.

See **WOMEN**, 1.

CLERGYMEN.

See also **THEOLOGICAL JURISPRUDENCE**.

Actions for divorce by, see also **DIVORCE**, 1.

Libel of, see **LIBEL AND SLANDER**, 4.

In general.

1. A negro preacher is not worthless. *Falloon v.*

Schilling, 29 Kan. 292, 44 Am. Rep. 642, *per* Brewer, J.

2. Methodist ministers are accustomed to ask for contributions, and it is not humiliating to borrow a small sum from one of them in an emergency. Missouri, etc., R. Co. v. Armstrong (Tex. Civ. App. 1896), 38 S. W. Rep. 368.

3. "When a man only preaches a little, and undertakes to deal in the transitory things of this life, it is well always to have writings with him, as memory is one of the worldly things that may be counted uncertain." Moore v. Mustoe, 47 W. Va. 549, 35 S. E. Rep. 871, *per* Dent, P.

4. There are many of the clergy in the different Protestant denominations who would most willingly condescend to preach in Trinity Church, New York City. Groesbeeck v. Dunscomb (N. Y. Super. Ct., Spec. T.), 41 How. Pr. (N. Y.) 302, *per* McCunn, J.

White necktie as evidence.

5. The fact that a man has on a white necktie is some evidence that he is a clergyman. Hayes v. People, 25 N. Y. 390, 82 Am. Dec. 364.

Sale of church to pay preacher.

6. Certainly it is an energetic measure to sell the church to pay the preacher, but the law will do it when there are no other assets. Lyons v. Planters' L., etc., Bank, 86 Ga. 485, 12 S. E. Rep. 882, *per* Bleckley, C. J.

Fraud upon member of flock.

7. "The relation of clergyman and parishioner raises a presumption of undue influence on the part of the former in case of a contract between them Where such spiritual adviser obtains a devise or grant or gift from a member of his flock, the burden is upon him to show the entire good faith of the transaction." *Good v. Zook* (Iowa 1901), 88 N. W. Rep. 376, *per* Waterman, J.

Commercial Travelers.

See PRINCIPAL AND AGENT, 2.

COMMON SCOLDS.

See also NUISANCES, 8.

Punishment of.

It is not unreasonable to hold women liable for a too free use of their tongues. *Com. v. Mohn*, 52 Pa. St. 243, 91 Am. Dec. 153.

COMMUTATION.

Commutation after the death of a prisoner will do him no good. *In re McMahon*, 125 N. Car. 38, 34 S. E. Rep. 193, *per* Furches, J.

Compensation of Physicians.

See PHYSICIANS AND SURGEONS, 7, 8.

Complaint.

See PLEADING, 14-17.

Concealed Weapons.

See CARRYING WEAPONS.

Confidential Communications.

See WITNESSES, 11.

Consideration.

For contract, see CONTRACTS, 4.

Marriage contract, see MARRIAGE, 13.

CONSTITUTIONAL LAW.

Right to get drunk, see DRUNKENNESS, 17-19.

In general.

1. "The constitution is not maintained by overturning it." *Cline v. State*, 36 Tex. Crim. 320, 36 S. W. Rep. 1099, 37 S. W. Rep. 722, 61 Am. St. Rep. 850, *per* Davidson, J.

2. The court will take judicial notice of the constitution. *Dodge v. Cornelius*, 168 N. W. 242, 61 N. E. Rep. 244, *per* O'Brien, J.

3. It is no reason for not obeying the constitution that it has heretofore been disregarded. *Wells v. Savannah*, 87 Ga. 397, 13 S. E. Rep. 442.

Privileges and immunities.

4. "To do as one pleases, even when he pleases, in his own business, to act absurdly or from low impulses, is a very precious right." *Daniel v. Frost*, 62 Ga. 697, *per* Bleckley, J.

5. No provision of the constitution guarantees to a citizen the right to marry any one who is willing to wed him. *State v. Jackson*, 80 Mo. 175, 50 Am. Rep. 499.

6. A man sixty-seven years old has the right to drive a pair of three-year-olds on any public highway. *Chicago, etc., R. Co. v. Miller*, 46 Mich. 532, 9 N. W. Rep. 841, 26 Am. & Eng. R. Cas. 89.

7. A man who carries on the business of a chrysanthemum and fruit grower, nurseryman and florist is entitled to have an ornamental dwelling house if he likes to have it. *Salter v. Metropolitan Dist. R. Co.*, L. R. 9 Eq. 432, *per Sir W. M. James*, V. C.

8. "Clearly the procreation of illegitimate children cannot be said to be a privilege or immunity of citizens of the United States." *Plunkard v. State*, 67 Md. 364, 10 Atl. Rep. 225, *per Miller*, J.

9. The right to conduct a laundry where it can be most conveniently, advantageously, and profitably carried on without injury to others "is one of the highest privileges and immunities secured by the Constitution to every American citizen, and to every person residing within its protection." *Stockton Laundry Case*, 26 Fed. Rep. 611, *per Sawyer*, J.

Equal protection of laws.

10. The maxim that "Cleanliness is next to godliness," entitles a laundry to the equal protection of the laws. *In re Hoover*, 30 Fed. Rep. 51, *per Speer*, J.

Right to keep and bear arms.

11. The provision of the United States Constitution that "the right of the people to keep and bear arms shall not be infringed" does not guarantee the right to carry arms into a church. *State v. Wilforth*, 74 Mo. 528, 41 Am. Rep. 330.

Cruel and unusual punishment.

12. "It is neither a cruel nor an unusual punishment to adjudge the abatement of a nuisance." *McLaughlin v. State*, 45 Ind. 338, *per Downey*, C. J.

Construction.

Of deeds, see **DEEDS**, 3-5.

Phrases, see **WORDS AND PHRASES**.

Statutes, see **STATUTES**, 8-12.

Verdict, see **VERDICTS**, 4.

Will, see **WILLS**, 3, 4.

Contingent Remainders.

See **ESTATES**, 1.

CONTINUANCES.**Grounds.**

1. The unlawful detention in jail of the only counsel for the defendant is sufficient ground for a continuance. *Scott v. State* (Tex. 1902), 68 S. W. Rep. 171.

2. "It is perhaps to be regretted that in a great city like Chicago the business of courts cannot be transacted as it once was in small country districts, where counsel and court, in a most commendable spirit of

friendliness, waited for the convenience of each other. If a lawyer was ill, or wished to go fishing, not until he returned to labor was an effort made to force to trial causes in which he was engaged. In this city, he who stands still is run over; one must keep up with the procession or get out of the way." *Lewis v. Firemen's Ins. Co.*, 67 Ill. App. 195.

CONTRACTS.

See also BREACH OF MARRIAGE PROMISE; CHATTEL MORTGAGES; DEEDS; FRAUDULENT CONVEYANCES; GIFTS; GUARANTY; MORTGAGES; PLEDGES; SALES; USURY; VENDOR AND PURCHASER.

By married woman, see HUSBAND AND WIFE, 25.

Of marriage, see MARRIAGE, 11-13.

In general.

1. "The law has no preference for one kind of a contract over another." *Smith v. Crews*, 2 Mo. App. 269, *per* Bakewell, J.

2. "It is impossible for a contract at one and the same time to be a contract of entirely different and conflicting characteristics." *W. T. Adams Mach. Co. v. Newman*, 107 La. 702, 32 So. Rep. 41, *per* Nicholls, C. J.

Execution.

3. Where a contract is agreed upon one of the parties to it can go around the corner to sign such papers as are necessary without changing the nature of the contract. *Cartwright v. Wilmerding*, 24 N. Y. 521.

Consideration.

4. A contract by one party to pay money in consideration of a promise by the other party to "refrain from drinking liquor, using tobacco, swearing, and playing cards or billiards for money until he should become twenty-one years of age," is based on a sufficient consideration. *Hamer v. Sidway*, 124 N. Y. 538, 27 N. E. Rep. 256, 21 Am. St. Rep. 693.

Public policy.

5. A bond conditioned to murder a man is void. *Robinson v. Robards*, 15 Mo. 459, *per* Scott, J.

6. A promise made in consideration that a person shall abstain from the use of intoxicating liquor is not illegal as against public policy. *Lindell v. Rokes*, 60 Mo. 249, 21 Am. Rep. 395.

Void by statute.

7. Where a contract is void by statute it is wholly void, "for the statute is like a tyrant; where he comes he makes all void; but the common law is like a nursing father and makes void only that part where the fault is and preserves the rest." *Per* Lord Hobart. *Quoted in* *Maleverer v. Redshaw*, 1 Mod. 35; *Collins v. Blantern*, 2 Wils. C. Pl. 347; *Hyslop v. Clarke*, 14 Johns. (N. Y.) 458.

Voidable contract.

8. Where one party is drunk and the other party is an infant, the contract is voidable. *Walker v. Davis*, 1 Gray (Mass.) 506.

CONTRIBUTORY NEGLIGENCE.

See also CARRIERS, 11 ; MASTER AND SERVANT, 7 ; NEGLIGENCE; of PEDESTRIAN, see STREETS AND HIGHWAYS, 6.

Speaking to woman on street, see BENEFICIAL ASSOCIATIONS, 2.

"Indirect suicide."

1. "Indirect suicide gives no title to *post mortem* reward." Central R. & B. Co. v. Kitchens, 83 Ga. 83, 9 S. E. Rep. 827, *per* Bleckley, C. J.

Drunkenness.

2. A drunken man is not presumed to be careless in what he does. Ford v. Umatilla County, 15 Oregon 313, 16 Pac. Rep. 33, *per* Thayer, J.

Husband bowing to wife.

3. The fact that a man is bowing to his wife will not excuse his contributory negligence although it is "commendable gallantry and an admirable performance for a husband." Ashbrook v. Frederick Avenue R. Co., 18 Mo. App. 290, *per* Philips, J.

Questions for jury.

4. "The court cannot point out to the jury specifically the ways of the prudent, the law supposing those ways better known to the jury than to the judge." Richmond, etc., R. Co. v. Howard, 79 Ga. 44, 3 S. E. Rep. 426, *per* Bleckley, C. J.

5. "To hold that the question whether leading a

horse behind a wagon should be submitted to the jury as evidence of negligence on the part of the plaintiff in inducing an attack by a dog would render it necessary to submit to the jury the question whether the color of the horse or of the wagon, or of the clothes of the driver, might not have induced an attack. The law does not pay this respect to the characteristics or prejudices of dogs." *Boulester v. Parsons*, 161 Mass. 182, 36 N. E. Rep. 790, *per* Lathrop, J.

Conveyances.

See DEEDS, 1.

COPYRIGHT.

Newspaper.

1. A newspaper is not a "book," neither is it an "encyclopædia, review, magazine, periodical work, or other work published in a series of books or parts." *Cox v. Land, etc., Journal Co.*, L. R. 9 Eq. 324.

Dramatic composition.

2. "An exhibition of women 'lying about loose' or otherwise, is not a dramatic composition." *Martinetti v. Maguire, Deady* (U. S.) 216, *per* Deady, J.

3. "Heroes and heroines, as well as villains of both sexes, have for a time whereof the memory of the theater goer runneth not to the contrary, been precipitated into conventional ponds, lakes, rivers, and seas;" and the representation of such an incident on the stage is not sufficiently original to be subject to copyright. *Serrana v. Jefferson* (C. C.), 33 Fed. Rep. 347.

CORPORATIONS.

See also MUNICIPAL CORPORATIONS ; PROPHECIES, 1 ; RAILROAD COMPANIES.

Corporation lawyers, see LAWYERS, 16.

Insurance companies, see INSURANCE, 2.

In general.

1. A corporation is not a sentient being. *Elledge v. National City, etc., R. Co.*, 100 Cal. 282, 34 Pac. Rep. 720, 38 Am. St. Rep. 290, *per* Temple, C.

2. In the happy hunting grounds there are no corporations, as they have no souls and consequently no hereafter. *Southern R. Co. v. Phillips*, 100 Tenn. 130, 42 S. W. Rep. 925, *per* Wilkes, J.

4. "It is impossible to conceive of a corporation engaging in the practice of medicine." *Wellman v. Jones*, 124 Ala. 580, 27 So. Rep. 416, *per* Dowdell, J.

5. "No man can expect his creditors to run him as a corporation any more than as an individual." *Burns v. Beck*, 83 Ga. 471, 10 S. E. Rep. 121, *per* Bleckley, C. J.

6. A cricket and baseball club is not a corporation engaged in promoting agricultural fairs. *Acker v. Richards*, 63 N. Y. App. Div. 305.

7. The law cannot attribute moral qualities to a corporation, "although it may try to secure some respect for them under penalties which touch its pocket or franchise." *Fox v. Mohawk, etc., Humane Soc.*, 25 N. Y. App. Div. 26, *per* Landon, J.

Corporate name.

8. Where it appears that a corporation was "conceived in sin and brought forth in iniquity," that wrong attended at its birth, and that fraud stood sponsor at its christening, imposing upon the corporate child a name to which it was not entitled, and which it had no right to bear, it would seem that the use of such name should be enjoined. *Kathreiner's Malzkaffee Fab. v. Pastor Kneipp Med. Co.*, 82 Fed. Rep. 321, *per* Jenkins, J.

Certificates of Stock.

9. It is impossible for any sane person to center his affections upon a particular stock certificate so that any violence could be done to his feelings by requiring him to accept another certificate of precisely similar character in lieu of it. *Atkins v. Gamble*, 42 Cal. 86, 10 Am. Rep. 282.

Capital stock.

10. "Capital stock" is "a business photograph of all the corporate possessions and possibilities." *State v. Duluth Gas, etc., Co.*, 76 Minn. 96, 78 N. W. Rep. 1032, *per* Mitchell, J.

Meeting of stockholders.

11. One shareholder cannot hold a meeting of stockholders. *Sharp v. Dawes*, L. R. 2 Q. B. Div. 26.

Directors.

12. Directors of a corporation of the conventional American type are mere figureheads and dummies,

whose names may serve to decorate the company's paper and cajole the public into thinking that their connection with it is a guaranty of its financial ability. *Hadden v. Natchaug Silk Co.*, 84 Fed. Rep. 80, *per* Coxe, J.

Dividends.

13. "Dividends are the ordinary, the natural, the only natural income or increase. . . . There can be no natural birth from this parent, except dividends be born of her womb. Railroad stock produces that naturally, in the very order of its creation, according to the very law of its existence, breathed into it by the legislature when it became a living entity. Its maker then said to it: 'Be fruitful and multiply dividends.' So that, according to its organic nature, it makes and distributes dividends, and their birth is no more extraordinary than that of a child from healthy parents, and the issue of large dividends no more extraordinary or unnatural than the birth of twins." *Millen v. Guerard*, 67 Ga. 284, 44 Am. Rep. 720, *per* Jackson, C. J.

Amenability to statutes.

14. "Corporations and directors who accept the franchise to be a corporation under the general laws of a state can no more free themselves or their corporation from the discharge in that state of the duties those statutes impose upon them, or divest themselves of the responsibilities and liabilities imposed upon them by those statutes, by simply conducting their business

beyond the borders of the state, than the Ethiopian can by migration change his skin, or the leopard his spots." *Tabor v. Commercial Nat. Bank*, 62 Fed. Rep. 383, *per* Sanborn, J.

Ultra vires.

15. Where a corporation is formed for the more efficient worship of God, the preservation and perpetuation of a church, and the better control and regulation of the affairs and property thereof, "however urgent its needs for money, it cannot rent a farm to make a crop of corn or cotton, nor a store to buy and sell goods, nor a livery stable to let out horses and carriages, nor can it hire a vessel to transport the public upon rivers or the ocean. To charter a steamer and sell tickets to the public for an excursion is to enter into the responsibilities and hazards of a business, for gain and profit, not mentioned or hinted at in 'the more efficient worship of God, the preservation and perpetuation of said church, and the better control and regulation of the property thereof.'" *Harriman v. First Bryan Baptist Church*, 63 Ga. 186, 36 Am. Rep. 117, *per* Bleckley, J.

COSTS.

See ACTIONS, 4, 10, 12.

Of litigation about boundaries, see BOUNDARIES, 1.

Payment by dead man.

The court cannot order a dead man to pay costs. *Featherstone v. Cooke*, L. R. 16 Eq. 298.

Counterclaim.

See SET-OFF AND COUNTERCLAIM.

COURTS.

See also JUDGES ; JUSTICE ; JUSTICES OF THE PEACE ; OBITER DICTA.

Conduct of, see TRIAL, 9-11.

Investigation of theology by, see THEOLOGICAL JURISPRUDENCE, 6.

Jurisdiction over husband and wife, see HUSBAND AND WIFE, 38-40.

Province of court and jury, see ANIMALS, 41 ; CONTRIBUTORY NEGLIGENCE, 4, 5 ; EVIDENCE, 47.

Status of women before, see WOMEN, 22-24.

Suicide of, see SUICIDE, 1.

In general.

1. "The court is the mouth of the law." *State v. Bell*, Add. (Pa.) 156, 1 Am. Dec. 298.

2. It is for each court to determine what is its business. *Carswell v. Schley*, 59 Ga. 17.

3. The south door of a courthouse is "at the courthouse." *Peck v. Starks* (Neb. 1902), 89 N. W. Rep. 1040.

4. "The judge holds his court as a driver holds the reins, to govern, guide, restrain." *State v. Miller*, 75 N. Car. 73, *per* Reade, J.

5. A fit occasion to deliberate on a question of practice which has not been satisfactorily settled is "when

the court is full." Postmaster Gen. *v.* Trigg, 11 Pet. (U. S.) 173, *per* Taney, C. J.

6. A court, even though it might know all the law part of the time, and part of the law all the time, might not know all the law all the time. Booth *v.* Koehler, 51 Ill. App. 370, *per* Gary, J.

7. When the court is embarking with only a crude chart, upon a newly-discovered sea filled with rocks and dangerous shoals, it should proceed with the utmost caution. Davison *v.* National Harrow Co. (C. C.), 103 Fed. Rep. 360, *per* Coxe, J.

8. A court is entitled to no eulogies for extraordinary energy in the fulfilment of its duties for working when it is 98 degrees Fahrenheit in the shade, on a "day of wilted collars and oily butter," if the case presents a new question under the statute of limitations. Searle *v.* Adams, 3 Kan. 515, 89 Am. Dec. 598, *per* Crozier, C. J.

9. "The District Court is the basic principle upon which the entire system is founded; and the whole may be likened to some noble oak, towering with Olympian majesty and imperial supremacy above the lesser trees of the forest. The bole or trunk, vigorous and strong, springing—a graceful colonnade—from the ground, to bathe its leafy foliage in the clouds, fitly represents the district courts. This, supported and nourished by the county courts and commissioners' and justices' courts, may be aptly termed the

roots of the system, which strike down deep into the rich alluvial soil of our jurisprudence. The courts of civil appeals stretch their giant limbs above and around, and with their superb setting reach out to catch the winds and dews and sunshine, to give them back again, and to shadow, fertilize, and fructify the soil beneath. While high over all, standing like armed sentinels to guard the sacred domain, crowning the summit, are the supreme court and the court of criminal appeals. Others can be created, but they must be of like kind, and grafted into the system by skillful hands. Thus completed, unique in outline, perfect in symmetry, and vigorous in its strength and growth, this magnificent temple of justice, builded by the framers of our constitution, is well fitted to meet and grapple with all the demands of litigation, and to withstand the sinister touch of the fawning sycophant, or the ruder assaults of brute force and unchained power, no matter by whom set in motion." *Coombs v. State* (Tex. Crim. App. 1898), 47 S. W. Rep. 163, *per Henderson, J.*

Supreme courts.

10. "Some courts live by correcting the errors of others and adhering to their own. On these terms courts of final review hold their existence, or those of them which are strictly and conclusively courts of review, without any original jurisdiction, and with no direct function but to find fault or see that none can be

found. With these exalted tribunals, who live only to judge the judges, the rule of *stare decisis* is not only a canon of the public good, but a law of self-preservation. At the peril of their lives they must discover error abroad and be discreetly blind to its commission at home." *Ellison v. Georgia R. Co.*, 87 Ga. 691, 13 S. E. Rep. 809, *per* Bleckley, C. J.

Jurisdiction.

11. "It is not for the judiciary to intermeddle with the question as to what is or what is not the 'proper sphere of woman.'" *Lockwood's Case*, 9 Ct. Cl. 346.

12. "The besetting sin of courts is to go beyond their jurisdiction and supervise the action of the other departments." *In re Gorham*, 129 N. Car. 481, 40 S. E. Rep. 311, *per* Clark, J.

United States courts.

13. The cannibal of the Fejees may sue in a United States court in a personal action though having no courts at home for us to resort to. *Taylor v. Carpenter*, 2 Woodb. & M. (U. S.) 1; *per* Woodbury, J.

14. After a state has yielded to the federal army, it can very well afford to yield to the federal judiciary, otherwise there would be a jarring discord in the harmony of the law. *Wrought Iron Range Co. v. Johnson*, 84 Ga. 754, 11 S. E. Rep. 233, *per* Bleckley, C. J.

15. Judicial notice will be taken of the fact that "there has been some change of sentiment upon the subject of the jurisdiction of the federal courts, and the right of parties to proceed therein, in recent years." *Hughes v. Green*, 75 Fed. Rep. 691, *per* Hallett, J.

CREDITORS' BILLS.

Priorities of creditors.

Where an executor files a creditors' bill and forces creditors to establish their priorities, he cannot exclude those whose hands he has procured the court to tie. The court will not hold while he skins. *Fouche v. Harison*, 78 Ga. 359, 3 S. E. Rep. 330, *per* Bleckley, C. J.

CRIMINAL LAW.

Particular offenses, see ADULTERY; COMMON SCOLDS; CRUELTY TO ANIMALS; DUELLING; ESCAPE; FALSE PRETENCES; FORNICATION; GAMING; HOMICIDE; INDECENCY; INTOXICATING LIQUORS, 8-18; KIDNAPPING; LARCENY; MAYHEM; MISCEGENATION; PERJURY; RAPE; RIOT; ROBBERY; SACRILEGE; SEDUCTION; SUICIDE, 1; SUNDAY, 1, 5-13; TREASON; VAGRANCY.

Breaking prison, see STATUTES, 11.

See also ARREST; GRAND JURY; HABEAS CORPUS; INDICTMENTS; MAXIMS, PROVERBS AND ADAGES, 12; TRIAL, 1, 4-6, 10, 11; VENUE.

Action for civil injury, see ACTIONS, 8.

“Wherefore hast thou despised the commandment of the Lord, to do evil in his sight?” *Quoted* by Hurt, J., in *Carlisle v. State*, 31 Tex. Crim. 537, 21 S. W. Rep. 358.

“It is not the manner of the Romans to deliver any man to die, before that he which is accused have the accusers face to face, and have license to answer for himself concerning the crime laid against him.” *Quoted* by Ryland, J., in *State v. McO’Blenis*, 24 Mo. 402, 69 Am. Dec. 435.

In general.

1. “A criminal case is one in which the party is charged with crime.” *Robinson v. State*, 66 Ga. 517, *per* Crawford, J.

2. Though criminal justice is supposed to be leaden-heeled, the leaden heel is not indispensable. *Hubbard v. State* (Neb. 1902), 91 N. W. Rep. 869.

3. “To do right, or seem to do right, after doing wrong, is often the best means of shunning detection.” *Minor v. State*, 56 Ga. 630, *per* Bleckley, J.

4. “We need in criminal matters the ‘justice, mercy, and truth’ of the common law, and not its ‘mint, anise and cummin.’” *State v. Phelps*, 24 La. Ann. 493, *per* Howe, J.

5. The idea which seems to have obtained in the minds of some people in this country that the primary object of the criminal laws is the protection of criminals is erroneous. *State v. Griffin* (Idaho 1895), 40 Pac. Rep. 58.

What is criminal.

6. "Legal offenses are crimes and misdemeanors enacted by the legislature." *People v. Police Com'rs*, 20 Hun (N. Y.) 333.

7. The business of manufacturing fine salt is a perfectly legitimate one. *Clancey v. Onondaga Fine Salt Mfg. Co.*, 62 Barb. (N. Y.) 395.

8. "A party may engage in the grocery business." *Brewster v. Miller's Sons Co.*, 101 Ky. 368, 41 S. W. Rep. 301, *per* Paynter, J.

9. "There is no such crime known to the laws of Maryland as that of being a 'Black Republican.'" *Baltimore v. State*, 15 Md. 485, *per* Le Grand, C. J.

10. "It is neither immoral, criminal, nor against the public policy, for a person who is not under arrest to go where he pleases, so he does not trespass upon the rights of others." *Dunkin v. Hodge*, 46 Ala. 523, *per* Peters, J.

11. It is not ground for sending a servant to the house of correction that he was saucy and gave his master's horses too much corn. *Rex v. Okey*, 8 Mod. 45.

Principals and accessories.

12. A person cannot aid himself to do an act. *Carpenter v. People*, 8 Barb. (N. Y.) 603.

13. "A man may commit a crime as principal without being present." *Minor v. State*, 56 Ga. 630, *per* Bleckley, J.

Motive.

14. "There is always a motive for a crime." *State v. Baker*, 33 W. Va. 319, 10 S. E. Rep. 639, *per* Brannon, J.

Defenses.

15. "Wisdom is a defense, and money is a defense." *Quoted* by Campbell, C. J., in *Monroe v. State*, 71 Miss. 196, 13 So. Rep. 884.

16. The facts that a person is old and that he has rendered some service to the nation "are not necessarily characteristic of innocence and virtue." *Richards v. State* (Neb. 1902), 91 N. W. Rep. 878, *per* Sullivan, C. J.

Evidence.

17. In New York City convictions without any evidence occur very often. *People v. State Reformatory for Women*, 38 Misc. (N. Y.) 233, 77 N. Y. Supp. 145, *per* Gaynor, J.

18. Where an indictment lays property in a married woman and the evidence shows that it is in her husband, the variance is fatal even though the tenor of her testimony shows that she considers her husband as a member of her family and herself as the head of the establishment and that she puts the petticoat in a more advanced position than the pantaloons. *Morgan v. State*, 63 Ga. 307, *per* Bleckley, J.

Former jeopardy.

19. "For the public authority, whether king or

commonwealth, to try the same person over and over again for the same offense would be rank tyranny. It would amount, in capital cases, to cruelty not unlike that of keeping a loaded repeater pointed at the prisoner's head, and, with deadly purpose, but bad aim, discharging slowly one cartridge after another." *Nolan v. State*, 55 Ga. 521, 21 Am. Rep. 281, *per* Bleckley, J.

Rights after conviction.

20. "The defendant, even after conviction, has some rights that a court is bound to respect." *People v. Kennedy*, 58 Mich. 372, 25 N. W. Rep. 318, *per* Morse, C. J.

Cross-Examination.

See WITNESSES, 26, 27.

Cruel and Unusual Punishment.

See CONSTITUTIONAL LAW, 12.

Cruelty.

See DIVORCE, 11-16.

CRUELTY TO ANIMALS.

Bull-baiting.

A statute which prohibits beating, abusing or ill-treating any "ox, cow, heifer, steer, sheep, or other cattle" does not make bull-baiting an offense. *Ex p. Hill*, 3 Car. & P. 225, 14 E. C. L. 280, *cited* in *State v. Schuchmann*, 133 Mo. 111, 33 S. W. Rep. 35.

Cursing.

See ABUSIVE AND OFFENSIVE LANGUAGE, 2-4.

CUSTOMS DUTIES.**Deceiving customs inspector.**

“There are individuals who would not plunder their neighbors by stealing their property, but who would be troubled with no more conscientious scruples about restoring a used stamp than they would about deceiving a customs inspector.” *Kaufmann v. U. S.*, 113 Fed. Rep. 919, *per* Lacombe, J.

DAMAGES.

Double damages, see MATHEMATICS, 5.

“And if men strive together, and one smite another with a stone, or with his fist, and he die not, but keepeth his bed ; if he rise again, and walk about upon his staff, then shall he that smote him be quit : only he shall pay for the loss of his time, and shall cause him to be thoroughly healed.” *Quoted* by Pettit, C. J., in *Adams v. Waggoner*, 33 Ind. 531, 5 Am. Rep. 230.

For mental anguish.

1. “The anguish of a mother bending over the body of her child, every lock of whose sunny hair is entwined with a heartstring, and kissing the cold lips that are closed forever, cannot come within the range of comparison with any mental suffering caused by the loss of a pig.” *Chappell v. Ellis*, 123 N. Car. 259, 31 S. E. Rep. 709, 68 Am. St. Rep. 822, *per* Douglas, J.

For injuries to women.

2. "The difference between the mental anguish caused by the presence of a scar on a man's body and that produced by the presence of the same kind of a scar upon a woman's face would hardly be decided in favor of the man, although he alone of the two possessed the vocabulary necessary for a vivid description of the alleged tortures of mind." *Western Union Tel. Co. v. Ferguson*, 157 Ind. 64, 60 N. E. Rep. 674, 1080, *per Baker*, J.

3. In an action by "a burlesque opera bouffe artist," who is under a contract to "show her limbs in silk stockings," to recover damages for personal injuries, an instruction that she cannot recover special damages on account of her broken leg if it was a part of her business to go upon the stage and exhibit her legs in such a way as is indecent in fact, and immoral in its tendencies, or on account of the loss of her opportunity to earn money in such employment, should be refused. *Baumeister v. Markham*, 101 Ky. 122, 39 S. W. Rep. 844, 41 S. W. Rep. 816, 72 Am. St. Rep. 397.

DEAD BODIES.

See also **BURIAL** ; **DEATH** ; **UNDERTAKERS**.

Amputated legs of decedent.

Where the servant of a railroad company is run over by one of its cars and he is taken to a hospital and his legs are amputated, and he subsequently dies, his widow

has no right of action against the railroad because the amputated legs were not delivered to her, even though a physician employed by the railroad company assumed charge of the case. *Doxtator v. Chicago, etc., R. Co.*, 120 Mich. 596, 79 N. W. Rep. 922.

DEAF AND DUMB PERSONS.

See also INSANITY, 8.

Mental powers of.

"The want of hearing and speech exceedingly cramps the powers and limits the range of the mind." *Per* Chancellor Kent in *Brower v. Fisher*, 4 Johns. Ch. (N. Y.) 441, *quoted* in *Matter of Perrine*, 41 N. J. Eq. 409.

DEATH.

See also BURIAL; DEAD BODIES; MEDICAL JURISPRUDENCE, 10.

Dead guarantor, see GUARANTY.

Payment of costs by dead man, see COSTS.

Statements of dead men, see EVIDENCE, 6.

"The days of our years are threescore years and ten, and if by reason of strength they be fourscore years, yet is their strength labor and sorrow." *Quoted* by Bland, C., in *Williams' Case*, 3 Bland (Md.) 186.

In general.

1. A dead man is not "absent." *Redfern v. Rumney*, 1 Cranch (C. C.) 300.

Judicial notice as to longevity.

2. The court will take judicial notice of the fact that the claimant of a boat which is leased for ninety-seven years will, before the expiration of the lease, have taken his last boat ride, with Charon as sailing master. The *Cygnets*, 66 Fed. Rep. 349, *per* Coxe, J.

Evidence of death.

3. Where it is shown that certain persons, if alive, would be nearly one hundred and fifty years old, it would seem that the jury might very properly presume that they are dead. *Doe v. Deakin*, 3 C. & P. 402, 14 E. C. L. 369.

DEBTOR AND CREDITOR

See also ASSIGNMENTS FOR BENEFIT OF CREDITORS; BANKRUPTCY; CREDITORS' BILLS; LIMITATION OF ACTIONS, 1.

Debt due by religious society, see THEOLOGICAL JURISPRUDENCE, 18.

Duty of parent to work children for creditors, see PARENT AND CHILD, 2.

Payment of debt by husband without wife's consent, see HUSBAND AND WIFE, 16.

Delinquent debtor.

1. It is uncharitable to regard every one who does not pay his debts as a knave. *Clark v. Iselin*, 10 Blatchf. (U. S.) 294, Fed. Cas. No. 2825, *per* Woodruff, J.

Size of debt.

2. A debt of \$5,908.70 is a little one. *Turner v. Johnson*, 95 Mo. 431, 7 S. W. Rep. 570, 6 Am. St. Rep. 62.

What to do with debt.

3. "The true law, everywhere and at all times delighteth in the payment of just debts. Blessed is the man that pays.....The best possible thing to be done with a debt is to pay it." *Robert v. Tift*, 60 Ga. 566, *per* Bleckley, J.

Rights of debtor.

4. The right to harry and bedevil one's creditor is inestimable. *Daniel v. Frost*, 62 Ga. 697, *per* Bleckley, J.

5. A debtor should not ordinarily be punished for overdiligence in meeting his honest obligations. *Union Stock Yards Nat. Bank v. Haskell* (Neb. 1902), 90 N. W. Rep. 233.

How debts extinguished.

6. The Civil War destroyed many things, but justice was not killed out. Private debts are extinguished, not by arms, but by payment, or discharge in bankruptcy, or voluntary release. *Swindle v. Poore*, 59 Ga. 336, *per* Bleckley, J.

Declaration.

See PLEADING, 14-17.

DEEDS.

See also CHATTEL MORTGAGES; FRAUDS, STATUTE OF; LANDLORD AND TENANT, 2; MORTGAGES.

Deed of conveyance.

1. "There is no such thing known in the law as a deed of conveyance." *Tucker v. Meeks*, 2 Sweeny (N. Y.) 736, *per* Jones, J.

How may be framed.

2. An owner of property may amuse himself as he likes in making a deed. *Cleveland v. Springfield Sav. Inst.*, 182 Mass. 110, 65 N. E. Rep. 27, *per* Holmes, C. J.

Construction.

3. The construction of a deed involves a question of "dry law." *Gazzam v. Poyntz*, 4 Ala. 374, 37 Am. Dec. 745.

4. A restriction in a deed against "any offensive trade or calling" applies to the grocery business. *Dorr v. Harrahan*, 101 Mass. 531.

5. "'Fee' in a conveyance does not mean 'fee' if twenty years thereafter there is a suspicion of oil and gas under the land. What next meaning will be given to it is a matter of divine foreknowledge, for the motive springs of human wisdom are as concealed within the human breast as the mysterious sources of oil and gas are hidden in the depths of the earth." *Uhl v. Ohio River R. Co.*, 51 W. Va. 106, 41 S. E. Rep. 340, *per* Dent, P., dissenting.

Priorities.

6. "Generally, the older of two deeds from the same person to different grantees, covering the same premises, is the better. In ordinary legal meteorology, if either is mere vapor while the other is solid, it is the younger and not the elder which is among the clouds." *Jones v. Georgia R. Co.*, 62 Ga. 718, *per* Bleckley, J.

DEFAULTS.

A defendant while in default, though not allowed to return the plaintiff's fire, is not obliged to run but may stand until he is shot down. *Hayden v. Johnson*, 59 Ga. 104, *per* Bleckley, J.

Definitions.

See WORDS AND PHRASES.

Demand.

See BANKS AND BANKING.

Demurrer.

See PLEADING, 17.

To bill in equity, see EQUITY, 5.

DENTISTS.

As mechanics, see HOMESTEAD AND EXEMPTIONS.

Dentists are not physicians within the meaning of a statute which allows the sale of intoxicating liquor on Sunday on the prescription of a physician, and to

hold otherwise would make toothache more welcome and prevalent than snake bite. *State v. McMinn*, 118 N. Car. 1259, 24 S. E. Rep. 523, *per* Clark, J.

Desertion.

See DIVORCE, 9, 10.

DIPLOMACY.

What constitutes.

“Men who have attained position, and in their own minds regard themselves as rulers, often in a bombastic way proclaim themselves the servants of the people. It is diplomacy, and in some quarters regarded as good form.” *In re Carolina Cooperage Co.*, 3 Am. Bank. Rep. 154, 96 Fed. Rep. 950.

Directors.

See CORPORATIONS, 12.

Of insurance companies, see INSURANCE, 2.

Discharge.

See RELEASE AND DISCHARGE.

Of bankrupt, see BANKRUPTCY, 7.

Disclaimer.

See PROPERTY, 6.

DISCOVERY.

Production of letter.

“A notice to produce a letter covers the envelope of the letter.” *U. S. v. Duff*, 19 Blatchf. (U. S.) 9, *per* Benedict, J.

Diseases.

See MEDICAL JURISPRUDENCE, 21-27.

DISMISSAL.

See also NONSUIT.

Voluntary dismissal.

1. "Men do not always know what to pray for ; and when they see that an ill-chosen petition is about to be granted, to be obliged to persevere in it and accept the boon, whether they will or not, would be a strict rule of practice. It would seem that they ought to be allowed to drop their suit and quit the court—taxed only with the costs." *Cherry v. Home Bldg., etc., Assoc.*, 55 Ga. 19, *per* Bleckley, J.

Effect of dismissal.

2. A dismissed certiorari "is not a living thing but a dead thing at its inception." *Hill v. State*, 115 Ga. 833, 42 S. E. Rep. 286.

DISORDERLY HOUSES AND PERSONS.

See also INDECENCY ; VAGRANCY.

Chinese prostitute, see CHINESE, 1.

Corroboration of pimp, see WITNESSES, 25.

Credibility of profligate and lewd persons, see WITNESSES, 19-21.

Disorderly persons on trains, see CARRIERS, 9, 10.

Evidence as to woman's good character, see EVIDENCE, 58.

"The hire of a whore [is] an abomination in the sight of the Lord." *Quoted* by Hanna, J., in *Wilson v. State*, 16 Ind. 392.

In general.

1. "The keeping of houses of ill fame is surely subversive of good morals." *Chariton v. Barber*, 54 Iowa 360, 6 N. W. Rep. 528, 37 Am. Rep. 209, *per* Beck, J.

2. People do not go to houses of ill fame to say their paternoster. *Loveden v. Loveden*, 2 Hag. Cons. 1, 4 Eng. Ecc. 461, *per* Lord Stowell.

"Disorderly tenement."

3. "The common law knows no such offense as keeping a 'disorderly tenement.'" *Com. v. Bulman*, 118 Mass. 456, 19 Am. Rep. 469, *per* Gray, C. J.

Tent.

4. A tent may be a disorderly house. *Killman v. State*, 2 Tex. App. 222, 28 Am. Rep. 432.

Evidence as to character of house.

5. A man, it would seem, cannot acquire knowledge that a house is a house of ill fame by smelling, tasting, or touching, but only by hearing or seeing. *People v. Glennon*, 37 Misc. (N. Y.) 1, 74 N. Y. Supp. 794.

Liability of prostitute to washerwoman.

6. A prostitute must have clean linen and is liable

to her washerwoman even though the wash includes some gentlemen's night-caps. *Lloyd v. Johnson*, 1 B. & P. 340.

DISTURBANCE OF THE PEACE.

Ball games.

The peace of people who go to see a ball game is not disturbed by such game. *Com. v. Meyers*, 8 Pa. Co. Ct. 435.

Dividends.

See CORPORATIONS, 13.

DIVORCE.

See also ALIMONY.

Preachers not favored.

1. Divorce laws "are not designed and must not be used for the purpose of enabling even preachers 'to off with the old love and on with the new.' " *Cochran v. Cochran*, 42 Neb. 612, 60 N. W. Rep. 942, *per Ragan*, C.

Grounds—In general.

2. "There are persons who think that excessive house-cleaning should be made a ground for divorce." *Com. v. Friends' Home for Children*, 7 Pa. Dist. 653.

3. There is no rule of law that will enable a husband to annul the marriage contract on the ground that his wife has a swollen tongue or inflammation of the

bladder. *Riley v. Riley*, 73 Hun (N. Y.) 575, 26 N. Y. Supp. 164.

4. Where a husband leaves his wife, but not for such a length of time as to constitute desertion, and lives in the same house with a woman other than his wife, and avows to his wife that he has formed an attachment for such other woman, but does not commit adultery, the wife is not entitled to a divorce on the statutory ground of "gross misbehavior and wickedness repugnant to and inconsistent with the marriage contract." *Stevens v. Stevens*, 8 R. I. 557.

Fraud.

5. Concealment by a woman of the fact that she has a glass eye will not warrant annulment of marriage. *Kraus v. Kraus*, 9 Ohio Dec. 515, 6 Ohio N. P. 248.

Physical incapacity.

6. Where a woman has given birth to twins her husband is not entitled to a divorce on the ground that she is physically incapable of contracting marriage. He has no right to expect triplets. *Riley v. Riley*, 73 Hun (N. Y.) 575, 26 N. Y. Supp. 164.

Gross unkindness.

7. That a husband is not sociable and does not always eat with his wife does not constitute gross unkindness. *Wade v. Wade* (Cal. 1892), 31 Pac. Rep. 258.

Drunkenness.

8. In a suit against a husband for divorce, where there is testimony that within two years he drank twelve barrels and thirty-five gallons of wine and several gallons of whiskey, it is proper to submit to the jury the question whether he had been guilty of drunkenness. *Coursey v. Coursey*, 60 Ill. 186.

Desertion.

9. A husband who stays in the penitentiary for a term of years for shooting his wife is not guilty of "wilful, continued, and obstinate desertion." *Wolf v. Wolf*, 38 N. J. Eq. 128.

10. A husband is not guilty of desertion when his wife rents his room to a boarder and crowds him out of the house. *Graham v. Graham*, 153 Pa. St. 450, 25 Atl. Rep. 766.

Cruelty, indignities, etc.

11. For a wife to go to Dusseldorf, Germany, and remain there from June until September for the purpose of perfecting herself in the art of painting does not constitute cruelty. *Smith v. Smith*, 62 Cal. 466.

12. It is ground for divorce that a wife becomes a believer in and practices Christian Science in such a manner and to such an extent as to seriously injure her husband's health and endanger his reason. *Robinson v. Robinson*, 66 N. H. 600, 23 Atl. Rep. 362, 15 L. R. A. 121, 49 Am. St. Rep. 632.

13. A statute allowing a divorce where one "shall offer such indignities to the person of the other as to render his or her condition intolerable and life burdensome" does not authorize a divorce where a husband takes a female servant to his bed and gets her in the family way. *Miller v. Miller*, 78 N. Car. 102.

14. Where the statutory grounds of divorce are "cruel and barbarous treatment endangering his wife's life," and the offering of "such indignities to her person as to render her condition intolerable and life burdensome," a wife is not entitled to a divorce because her husband rudely pulled her nose. *Richards v. Richards*, 37 Pa. St. 225.

15. It is an insufferable indignity to an educated and refined woman for her husband to hit her in the face with his fist and knock her against the wall, although it is shown that she "very often let her temper get the better of her, and sometimes on these occasions the defendant, to get beyond the reach of its rapid-firing battery, would take himself out of the house." *Young v. Young* (Tenn. Ch. 1900), 57 S. W. Rep. 438.

16. "A husband, under no circumstance of provocation, ought to kick in anger his wife while together on the family couch, and even cold feet afford no justification for such conduct. As a general proposition, and speaking outside of cold enunciated rules of law, she ought to be permitted to kick him out of bed when she wants to and can, without evoking from him the

retort in violence on her of his unseemly heels." Young *v.* Young (Tenn. Ch. 1900), 57 S. W. Rep. 438, *per* Wilson, J.

Evidence.

17. It is often found in divorce cases that much of the evidence taken is utterly useless in aiding the court to get at the real truth. Young *v.* Young (Tenn. Ch. 1900), 57 S. W. Rep. 438.

Alimony.

18. A husband's refusal to allow his wife to put a clean tablecloth on the table, and requiring her to use a carpet for a tablecloth, while very reprehensible, are not legal cruelty, entitling her to a decree for alimony. Wise *v.* Wise, 60 S. Car. 426, 38 S. E. Rep. 794, *per* McIver, C. J.

19. "An able-bodied man can earn ten cents a day, and can afford to pay his divorced wife three dollars a month as alimony." Muse *v.* Muse, 84 N. Car. 35, *per* Ruffin, J.

20. Where the price of board in respectable families is seven and one-half dollars per month, an allowance to a divorced wife of fifteen dollars per month is sufficient. Jones *v.* Jones, 95 Ala. 443, 11 So. Rep. 11.

Effect of divorce.

21. A divorced man is a "widower." Kunkle *v.* Reeser, 5 Ohio Dec. 422, 5 Ohio N. P. 401, *per* Rockwell, J.

Doctors.

See **PHYSICIANS AND SURGEONS.**

Dogs.

See **ANIMALS**, 21-33.

DRUGGISTS.

Sale of medicine on Sunday, see **SUNDAY**, 9.

Sale of liquor by.

"A drug-store where intoxicating liquor is freely sold is a curse to any town or city and should be suppressed." *Clark v. State*, 32 Neb. 246, 49 N. W. Rep. 367, *per Maxwell, J.*

DRUNKENNESS.

See also **INTOXICATING LIQUOR.**

Allowance to bankrupt for spree, see **BANKRUPTCY**, 6.

As ground for divorce, see **DIVORCE**, 8.

Contributory negligence of drunkard, see **CONTRIBUTORY NEGLIGENCE**, 2.

Right of drunken man on bridge, see **BRIDGES**, 2.

Right of women to drink, see **WOMEN**, 9.

Use of liquor by jurors, see **NEW TRIAL**, 10, 13-15.

"Inspiring, bold John Barleycorn !
What dangers thou canst make us scorn !
Wi' tippenny we fear nae evil ;
Wi' usquebae, we'll face the devil."

Quoted by Lipscomb, J., in Jones v. State, 13 Tex. 168, 62 Am. Dec. 550, and by Downey, C. J., in *Davis v. State*, 35 Ind. 496, 9 Am. Rep. 760.

In general.

1. "No one can accurately estimate the physiological relation between private and public drunkenness, nor the causal connection between intoxication one time and a score of times." *Keeble v. Keeble*, 85 Ala. 552, 5 So. Rep. 149, *per* Somerville, J.

2. "It needs no discussion or illustration to show that when it is said that a man is intoxicated, the meaning is, that his condition has been produced by the drinking of intoxicating spirituous liquor. No additional word or expression is used or needed to convey the full and unambiguous idea." *State v. Kelley*, 47 Vt. 294, *per* Barrett, J.

Right to get drunk.

3. It is an inalienable right of the citizen to get drunk. *St. Joseph v. Harris*, 59 Mo. App. 122.

Degrees of drunkenness.

4. "A man may be absolutely drunk without being dead drunk." *Cavender v. Waddingham*, 5 Mo. App. 457, *per* Bakewell, J.

Nature of beer consumers.

5. "Many of the consumers of beer are unable to read." *Kostering v. Seattle Brewing, etc., Co.*, 116 Fed. Rep. 620, *per* Gilbert, J.

How to get drunk.

6. One half pint of whiskey is a liberal dose. *Robinson v. State*, 33 Ark. 180, *per* English, C. J.

7. There is no fixed rule as to how much liquor it takes to make a man 'drunk. "A much less amount would produce excess in the case of a man already saturated with recent libations." *Trice v. Robinson*, 16 Ont. 433, *per* Boyd, J.

Capacity to drink.

8. The capacity of persons to drink liquor is unequal and the effect of liquor is different on different individuals. *Odd Fellows Mut. L. Ins. Co. v. Rohkopp*, 94 Pa. St. 59.

Effects of intoxication.

9. The fact that the effects of intoxication are not the same upon all persons may be known by experience. *Lytle v. State*, 31 Ohio St. 196.

Intermittent drunkenness.

10. A man may be of intemperate habits and still at a given time be sober. *Hampson v. Taylor*, 15 R. I. 83, 8 Atl. Rep. 331, 23 Atl. Rep. 732.

11. "A man may be drunk at 11 o'clock in the forenoon and sober up by 3:45 in the afternoon, or vice versa, he may be sober in the forenoon and by 3:45 in the afternoon be drunk. . . . Both conditions are liable to rapid and frequent fluctuations." *Raynor v. Wilmington Seacoast R. Co.*, 129 N. Car. 195, 39 S. E. Rep. 821, *per* Cook, J.

12. "An individual may be intoxicated three days out of a week for a length of time, and by reason of

such intoxication be wholly incapacitated for business or labor during the other three days." *Warrick v. Rounds*, 17 Neb. 411, 22 N. W. Rep. 785, *per* Reese, J.

Habitual drunkenness—Temperate habits.

13. A man is not an habitual drunkard merely because occasionally he gets to "feeling good." *Bizer v. Bizer*, 110 Iowa 248, 81 N. W. Rep. 465.

14. A person who occasionally remains sober may be of intemperate habits. *Tatum v. State*, 63 Ala. 147.

15. A man suffering from *delirium tremens* is not, in the ordinary sense of the term, a man of temperate habits. *Thomson v. Weems*, 9 App. Cas. 671, *per* Lord Watson.

16. A man notwithstanding the occasional use of intoxicating liquors and an attack of *delirium tremens* may be of temperate habits. *Knickerbocker L. Ins. Co. v. Foley*, 105 U. S. 350.

Evidence.

17. The subject of inquiry is a competent witness to testify whether he is of intemperate habits. *Tatum v. State*, 63 Ala. 147.

As to where he got it.

18. To prove that a liquor dealer made a man drunk it is not sufficient to show that he came out of the liquor dealer's place in an intoxicated condition, but

it must be shown that he went in sober. *Lovelan v. Briggs*, 32 Hun (N. Y.) 477.

Expert testimony.

19. "It requires no special, peculiar knowledge to determine whether a man is intoxicated or not. The signs of intoxication are known to all men. They are so marked and peculiar that no one can be deceived in regard to them. Every person of mature years can easily detect them—one as well as another, and one may as well be called an expert on the subject as another." *State v. Swift*, 57 Conn. 496, 18 Atl. Rep. 665, *per Park*, C. J.

How to reform.

20. "It has been found by experience, after an individual has so far given himself up to the indulgence of a depraved appetite as to become incapable of conducting his own affairs by reason of habitual drunkenness, that all indications of a permanent reformation are entirely illusory so long as he permits himself to use any intoxicating drinks whatever; and that the only chance of a permanent reformation for the unfortunate man who is once placed in that situation is to abandon the intoxicating cup entirely and forever." *In re Hoag*, 7 Paige (N. Y.) 312, *per Walworth*, C.

DUELLING.

What constitutes challenge.

The defendant told the prosecutor that he had come

to have a difficulty with him, that he would fight him in any way and at any place, and shortly afterward, laying his hand on a pistol, told the prosecutor to prepare himself in half a minute. *Held*, that this was a challenge to fight a duel. *Ivey v. State*, 12 Ala. 276.

A letter contained the following : " It appears that a nife is your faverite of setling fuses and if so bea the case you can con sider that it will sute me you are a Cowerd and darsent to except of the offer. i want the same chanse of sharpening mi nife you can set your day and I will be on hans.....com uplike a man chuse your man an I will chuse mine this thing must be setteld iam not a coward." *Held*, that this was not a challenge to fight a duel but rather an invitation to send one. *Aulger v. People*, 34 Ill. 486.

Dumb Persons.

See DEAF AND DUMB PERSONS.

DURESS.

What constitutes.

1. "The question of duress does not depend upon the possible physical ability of the party threatened to defend himself against the threatened injury." *Looper v. Phillips*, 1 Shannon Tenn. Cas. 269.

By husband upon wife.

2. "Cases can be presented wherein the husband, by many acts of omission or commission and without resort to threats or to actual personal violence, can so

conduct himself as to create such an apprehension on the mind of his wife, as separation from her, the loss of the presence and society of her children, the destruction of the home feeling, and a hundred other such manifestations of ill-feeling, as to cause duress, and to cause in her mind the belief that if she does not sign away her rights or incur them one of these to her most important things will happen." *Gabbey v. Forgeus*, 38 Kan. 62, 15 Pac. Rep. 866, *per* Simpson, J.

Effect of.

3. "Courts do not respect waivers obtained at the muzzle of a pistol." *Roberson v. State*, 53 Ark. 516, 14 S. W. Rep. 902, *per* Hemingway, J.

Dying Declarations.

See EVIDENCE, 14.

Dzieggithia.

See ANIMALS, 37.

EJECTMENT.

Description of John Doe.

"John Doe is a mere figment of the law's imagination, with no more existence as a real suitor than Mercury has as a real god. Only during high poetic transport does the law regard him as a true, objective personality. Though born of the muse, he is dry and commonplace enough to be engaged in the extensive real estate business which he pretends to carry on, but in very truth, he is a phantom—a legal will-o'-the-

wisp, an ingenious conceit of the law in its rapt poetic moods." *Rutherford v. Hobbs*, 63 Ga. 243, *per* Bleckley, J.

ELECTION.

Effect of making.

"The law will not permit a party to blow hot and cold." *Bryan v. Baldwin*, 7 Lans. (N. Y.) 174, *per* Gilbert, J. *Quoted* in *Killian v. Hoffman*, 6 Ill. App. 200.

Elevated railroads.

See RAILROAD COMPANIES, 10.

EMINENT DOMAIN.

Statute construed.

1. Power given to a city by statute to take land for "any street, lane, avenue, alley, public square, or other public grounds" does not include power to take land for a city prison, as the statute contemplates the taking of land which all persons would have an equal right to enjoy. *East St. Louis v. St. John*, 47 Ill. 463.

Right of owner to compensation.

2. The court will not without just compensation permit a city to "take for public use a sufficient amount of private property to cover the dead body of a fire-fly." *Wilkes Barre v. Troxell*, 6 Pitts. Leg. J. 202, *per* Handley, J.

EQUITY.

See also ACCOUNTING ; HUSBAND AND WIFE, 38 ; INJUNCTIONS ; INSANE PERSONS, 2 ; INTERPLEADER ; PARTITION, 1 ; RECEIVERS ; SPECIFIC PERFORMANCE ; SUBROGATION.

Chancery of the seas, see ADMIRALTY, 1.

Equitable liens, see LIENS, 1.

Multifarious bill, see PLEADING, 7.

In general.

1. "All complainants in equity are human beings, full of faults and sin." *Ansley v. Wilson*, 50 Ga. 418, *per* McCay, J.

2. "A court of equity is a poor place for a person to go to 'reap where he has not sown' as a general rule." *Cressman v. Whittall*, 16 Neb. 592, 21 N. W. Rep. 458.

Protection of women.

3. "Woman has always been a favorite with equity, and it always throws its willing arms around her." *Moore v. Mustoe*, 47 W. Va. 549, 35 S. E. Rep. 871, *per* Dent, P.

Application of Darwinian theory.

4. "If there is any analogy between a combination of druggists to raise and maintain prices and a biological species, the Darwinian theory is hardly a rule for a court in administering equity." *Brown v. Jacobs' Pharmacy Co.*, 115 Ga. 429, 41 S. E. Rep. 553.

Pleading.

5. Where the equities of the bill "are thick as hops" a demurrer should be overruled. *Worrill v. Coker*, 56 Ga. 666, *per Jackson*, J.

Laches.

6. A bill to review a decree which alleges that the oratrix in her despair "turned to her Creator for aid, and under His guidance she began to search through old papers" until she found a paper which will prove her rights, and that its recovery was, as she believes, caused by that Providence which will yet interpose in her behalf, is without equity where it appears that the paper was in her possession before the rendering of the decree and no reason is shown why she did not call on her Creator sooner. *Saunders v. Savage* (Tenn. Ch. App. 1900), 63 S. W. Rep. 218.

Error, Writ of.

See APPEAL AND ERROR.

ESCAPE.**Sufficiency of indictment.**

An indictment under a statute which makes it an offense to convey into a jail "articles useful to effect the escape of a prisoner" alleged that the defendant conveyed whiskey to a prisoner. *Held*, that the indictment was not open to the objection that it failed to show on its face that whiskey was a thing useful to

effect the escape of the prisoner. *Newberry v. State*, 7 Ohio Dec. 622.

ESTATES.

See also DEEDS; PROPERTY; RULE IN SHELLEY'S CASE.

Separate estate of wife, see HUSBAND AND WIFE, 31.

Contingent remainder.

1. "The umbilical cord from which a contingent remainder draws its feeble life is very slight, and when this is taken away it drops into the grave." *McCay v. Clayton*, 119 Pa. St. 133, 12 Atl. Rep. 860, *per Paxson, J.*

Reversion.

2. A provision that a lot shall revert to an owner when a school-house has "ceased to be" thereon for two years does not apply where no school-house has been placed on such lot within two years from the time designated, as a house which has not begun has not ceased to be. *Jordan v. Haskell*, 63 Me. 189.

Wanderings of disembodied shade.

3. When a life estate in land of a political offender is confiscated and sold under a decree and afterwards he is pardoned, he is restored to the control and power of disposition over the fee simple or naked property in reversion expectant upon the determination of the confiscated estate and "it is not necessary to be over-curious about the intermediate state in which

the disembodied shade of naked ownership may have wandered during the period of its ambiguous existence." *Illinois Central R. Co. v. Bosworth*, 133 U. S. 92, 10 Sup. Ct. Rep. 231, *per* Bradley, J.

ESTOPPEL.

See also, ELECTION ; RES JUDICATA.

Feeding, see FOOD, 6.

Definition.

1. "Estoppel is the principle of law that does not allow a man to speak the truth." *Brice v. Miller*, 35 S. Car. 537, *per* Kershaw, J.

2. The law will not allow a person to run with the hare and hold with the hounds. *In re Eagles*, 99 Fed. Rep. 695, *per* Purnell, J.

Estoppel in pais.

3. "A specialty deriving its validity from an estoppel *in pais* is perhaps somewhat like Nebuchadnezzar's image with a head of gold supported by feet of clay." *White v. Duggan*, 140 Mass. 18, 2 N. E. Rep. 110, 54 Am. Rep. 437, *per* Holmes, J.

4. "A man in the bed of a strange woman is in a very unfavorable situation to insist upon preserving inviolate the sacred concord of marriage, and harmony and confidence on the part of his wife." *U. S. v. Bassett*, 5 Utah 131, 13 Pac. Rep. 237, *per* Zane, C. J.

EVIDENCE.

See also, DISCOVERY ; EXHIBITS ; PHOTOGRAPHS ; RECORDS, 1 ; WITNESSES.

As to death, see DEATH, 3.

Good character, see NEGROES, 3.

Insanity, see INSANITY, 5-13.

Negligence, see NEGLIGENCE, 5.

Person being mulatto, see NEGROES, 2.

Pregnancy, see MEDICAL JURISPRUDENCE, 14, 15.

Woman's chaste character, see SEDUCTION, 1.

In action for divorce, see DIVORCE, 17.

Criminal cases, see CRIMINAL LAW, 17, 18 ; HOMICIDE, 7, 8 ; RAPE, 4-6 ; TREASON, 2.

Striking out irrelevant, see TRIAL, 13.

Verdict against weight of, see NEW TRIAL, 18.

White necktie as evidence that man is preacher, see CLERGYMEN, 5.

"Truth is stranger than fiction." *Quoted* by Crozier, C. J., in *Searle v. Adams*, 3 Kan. 515, 89 Am. Dec. 598.

"It is not so easy to find the truth as it is to discover the falsehood." *Quoted* as a saying by Weaver, J., in *Hannabalsen v. Session* (Iowa 1902), 90 N. W. Rep. 93.

"If I justify myself, mine own mouth shall condemn me." *Quoted* by Burford, C. J., in *Harvey v. Territory* (Okla. 1901), 65 Pac. Rep. 837.

"One witness shall not rise up against a man for any iniquity, or for any sin ; at the mouth of two wit-

nesses, or at the mouth of three witnesses, shall the matter be established." *Quoted* by Thornton, J., in *Chase v. Cheney*, 58 Ill. 509, 11 Am. Rep. 95.

In general.

1. "All rules of evidence are designed to elicit the truth." *Taff v. Hosmer*, 14 Mich. 309, *per* Cooley, J.

2. "Human nature constitutes a part of the evidence in every case." *Greene v. Harris*, 11 R. I. 5, *per* Potter, J.

3. "It cannot be held, as a matter of law, that one eyewitness to a transaction would supply better evidence than another eyewitness." *Blair v. State* (Tex. Crim. App. 1900), 60 S. W. Rep. 879.

4. "On the trial of a case, highly improper and incompetent testimony may accidentally fall from the lips of a sworn witness on the stand." *State v. Jackson*, 9 Mont. 508, 24 Pac. Rep. 213, *per* De Witt, J.

5. "It is hardly practicable to deal with testimony as we would with bullets—cutting off the necks, and rejecting the superabundant material which has run over in moulding." *Thompson v. Davitte*, 59 Ga. 484, *per* Bleckley, J.

6. "Courts of justice lend a very unwilling ear to statements of what dead men have said." *Lea v. Polk County Copper Co.*, 21 How. (U. S.) 493, *per* Catron, J.

Admissibility in general.

7. Evidence which is relevant and bears "right on

the bull's-eye of the case" is admissible. *Price v. State*, 72 Ga. 441, *per* Jackson, C. J.

8. The mere thoughts of a witness are not admissible in evidence. *Spradley v. State*, 80 Miss. 82, 31 So. Rep. 534.

9. In an action on a note the execution of which is admitted in the answer, the defendant is not entitled to have it offered in evidence for the mere purpose of bringing vividly to his recollection some delightful incident connected with its execution. *Williams v. Norton*, 3 Kan. 290.

10. In an action to recover the price of mantels alleged to have been sold to the defendant, evidence that the mantels had been put in place in his house is admissible, but evidence that he was warming himself by them day and night is calculated to prejudice the jury against him and is not admissible. *Watson v. Winston* (Tex. 1897), 43 S. W. Rep. 852.

Hearsay.

11. When one person makes a statement to another and the other repeats it to a third person, the testimony of the third person as to the statement is "the merest shadow, not the shadow of anything tangible, but of a nebulous and attenuated shade." It is "such stuff as dreams are made on." *U. S. v. Wong Chung*, 92 Fed. Rep. 141, *per* Coxe, J.

Part of res gestæ.

12. In an action against a railroad company to re-

cover the value of a jack which died while in the course of transportation, the evidence showed that a tramp was found in the car in which the animal sued for, and other jacks, were being carried, and that soon after being removed from the car he said, in the presence of the conductor: "It is d——d cold, and if it had not been for lopping them mules over the head I would have froze to death." The jack was afterwards found dead in the car with blood running from its mouth and nose. It was held, that the declaration of the tramp was no part of the *res gestæ*, and was inadmissible. St. Louis, etc., R. Co. *v.* Weakly, 50 Ark. 397, 8 S. W. Rep. 134, 7 Am. St. Rep. 104.

Documentary evidence.

13. The smallest slip of paper is sooner to be trusted for truth "than the strongest and most retentive memory ever bestowed on mortal man." *Miller v. Cotten*, 5 Ga. 341, *per Lumpkin, J.*

Dying declarations.

14. Declarations are not admissible as dying declarations where it appears that the declarant shortly before his death said "God damn it," and had not made any preparation for death, spiritually or otherwise. *Digby v. People*, 113 Ill. 123, 55 Am. Rep. 402.

Testimony of wife against husband.

15. On a prosecution for forgery the defendant's wife is competent to testify that he took her by the

back of the neck, led her into a bedroom and forced her to write the forged signature. *Beyerline v. State*, 147 Ind. 125, 45 N. E. Rep. 772.

Expert testimony and opinions.

16. Animals and things may be identified by the noises that they make, and a wagon-maker is competent to testify that a buggy belonged to the defendant because of the peculiar rattle of its wheels. *State v. Rainsbarger*, 74 Iowa 196, 37 N. W. Rep. 153.

17. Every witness of ordinary perception and observation is capable of giving his opinion as to the time of the day when an event happened. *Campbell v. State*, 23 Ala. 44.

18. The conclusion that a statement of a witness is one of fact because it is of a "collective fact," or because it "is an inference of facts from observed facts," carries with it its own refutation, and, like the struck eagle, it may

"View its own feather on the fatal dart

That winged the shaft that quivered in its heart."

Lipscomb v. State, 75 Miss. 559, 23 So. Rep. 210, 230, *per Magruder*, J.

Exhibiting person to jury.

19. Where a woman who is young, handsome, and attractive brings an action for personal injuries she is entitled to resort to the same proofs that she might have resorted to if she had been aged, ugly, and repulsive,

and consequently where it is alleged that her leg has been injured she may exhibit it to the jury. *Omaha St. R. Co. v. Emminger*, 57 Neb. 240, 77 N. W. Rep. 675.

Reputation.

20. Upon the trial of an issue involving the value of a jackass, it is competent to prove his reputation. *McMillan v. Davis*, 66 N. Car. 539.

21. On a criminal prosecution the defendant cannot introduce evidence as to a good reputation acquired by him while in jail awaiting trial. *Hill v. State*, 37 Tex. Crim. 415, 35 S. W. Rep. 660.

Judicial notice.

22. "Courts will not pretend to be more ignorant than the rest of mankind." *Power v. Bowdle*, 3 N. Dak. 107, 44 Am. St. Rep. 511, 54 N. W. Rep. 404, *quoting* Caton, J.

23. "The expression 'from the grass roots down,' in its ordinary or literal sense, means to the center of the earth, and that is as far as judicial notice can be expected to extend." *Martin v. Eagle Creek Development Co.*, 41 Oregon 448, 69 Pac. Rep. 216, *per* Wolverton, J.

24. The court will take judicial notice of the construction of an ice-cream freezer. *Brown v. Piper*, 91 U. S. 37.

25. The court does not judicially know that in all

cases kerosene is explosive. *Wood v. North Western Ins. Co.*, 46 N. Y. 421.

26. The court cannot take judicial notice of the weight of artificial legs. *Carrow v. Barre R. Co.* (Vt. 1902), 52 Atl. Rep. 537.

27. "We all know that boys of eight years of age indulge in athletic sports." *Gillespie v. McGowan*, 100 Pa. St. 144, 45 Am. Rep. 365, *per Paxson, J.*

28. The court knows judicially that it is dangerous to approach a mule, whether he is frightened or not. *Southern R. Co. v. Phillips*, 100 Tenn. 130, 42 S. W. Rep. 925, *per Wilkes, J.*

29. A court and jury will take notice, without proof, if necessary, that a sack of flour and a jug of whiskey have some value. *James v. State*, 53 Ala. 380.

30. Where, on a prosecution for murder it appears that the deceased kissed a woman, the court cannot take judicial notice whether she was a young woman or an old maid. *Alexander v. State*, 40 Tex. Crim. 395, 49 S. W. Rep. 229.

31. The court will take judicial notice of the fact that it is unusual conduct to go to bed on a sultry night before 9:50 p. m. *Davis v. Davis*, 40 W. Va. 464, 21 S. E. Rep. 906, *per Dent, J.*

32. "It may be safely laid down as a general rule (having its exceptions no doubt) that neither horses

nor men entirely change their characters, their habits, or their manners" in six or eight months. *Chamberlain v. Enfield*, 43 N. H. 356, *per* Sargent, J.

33. The court does not judicially know how an elephant would cross a railroad track before an approaching train. *Southern R. Co. v. Phillips*, 100 Tenn. 130, 42 S. W. Rep. 925. ••

34. No evidence is necessary to show that pain is suffered by a person whose arm is smashed and mangled from the fingers up to within a few inches of the shoulder and is subsequently amputated. *Chicago, etc., R. Co. v. Warner*, 108 Ill. 538, 18 Am. & Eng. R. Cas. 100.

35. The courts "cannot take judicial notice of the proper orthography or pronunciation of names in the Polish language," or that the name Kurkowski is pronounced Kurkowski. *State v. Johnson*, 26 Minn. 316, 3 N. W. Rep. 982.

36. The court will take judicial notice of the fact that cigarettes are wholly noxious and deleterious to health; that their use is always harmful; and therefore they possess no virtue, but are inherently bad, and bad only. *Austin v. State*, 101 Tenn. 563, 48 S. W. Rep. 305, 70 Am. St. Rep. 703.

37. The court will take judicial notice of the fact that a simple-minded country girl will be "touched" by a present of flowers, a bird, two rings, and a gold

watch. *Kern v. Kern*, 51 N. J. Eq. 574, 26 Atl. Rep. 837.

Prejudice against railroad companies.

38. The court will take judicial notice of the fact that the popular prejudice against railroad companies is so powerful as to taint the administration of justice. *Illinois Cent. R. Co. v. Welch*, 52 Ill. 183, 4 Am. Rep. 593.

As to negroes.

39. The court will take judicial notice of the fact that negroes are naturally superstitious. *Bowen v. State*, 9 Baxt. (68 Tenn.) 45, 40 Am. Rep. 71.

40. The court will take judicial notice of the proneness of the Americanized African to carry and use a razor as a deadly weapon. "To such the razor is what the machete is to the Cuban. It is his implement of livelihood in time of peace, and his weapon of destruction in time of war. This is matter of common report." *Claiborne v. Chesapeake, etc., R. Co.*, 46 W. Va. 363, 33 S. W. Rep. 262, *per Dent, J.*

Presumptions.

41. "An old-fashioned one-ply presumption of innocence is amply sufficient for all practical purposes of the administration of the criminal law." *State v. Soper*, 148 Mo. 217, 49 S. W. Rep. 1007, *per Sherwood, J.*

42. The presumption is that a negro is ignorant.

Bowen *v.* State, 9 Baxt. (68 Tenn.) 45, 40 Am. Rep. 71.

43. It is not to be presumed that a dog is the only chattel in a dog house. State *v.* Langford, 55 S. Car. 322, 33 S. E. Rep. 370, 74 Am. St. Rep. 746.

44. Where a man leaves his hat at a liquor dealer's it will not be presumed that he left it in payment for drinks. Lovelan *v.* Briggs, 32 Hun (N. Y.) 477.

45. There is no presumption, either of law or of fact, that imputes to the court ignorance of the fact that a billiard table is not a table at which faro is usually played. State *v.* Price, 12 Gill & J. (Md.) 260, 37 Am. Dec. 81.

46. "Before any presumption not manufactured by the legislature can mount to the bench, it has to serve for a long season on the jury and be trained for judicial administration." Kinnebrew *v.* State, 80 Ga. 232, 5 S. E. Rep. 56, *per* Bleckley, C. J.

Province of court of jury.

47. "The jury are to hold the scales, but the court must determine upon the admissibility of everything that is to be cast into them. The eyes of the jury are exclusively confined to the beam; the eyes of the court to the scales; the court is to determine what the jury is to weigh, the jury are to pronounce what it does weigh." Jones *v.* Fulgham, 2 Murph. (6 N. Car.) 364, *per* Seawell, J.

Weight and sufficiency.

48. "Neither courts nor juries are required to believe nonsense merely because it is sworn to." *State v. Gurley* (Mo. 1902), 70 S. W. Rep. 875, *per* Sherwood, J.

49. "Mere surmises, guesses, or conjectures of the jury can lend no support to their verdicts." *Cleveland, etc., R. Co. v. Miller*, 149 Ind. 490, 49 N. E. Rep. 445, *per* Jordan, J.

50. "The sea of suspicion has no shore, and the court that embarks upon it is without rudder or compass." *Boyd v. Glucklich* (C. C. A.), 116 Fed. Rep. 131, *per* Caldwell, J.

51. The fact that persons did not own or keep guns does not prevent their having had them on a particular occasion. *Gregory v. State*, 80 Ga. 269, 7 S. E. Rep. 222.

52. "The fact that a person wishes to borrow money does not tend to prove that he might not have had money to loan but a short time previously." *Heath v. Silverthorn Lead Min., etc., Co.*, 39 Wis. 146, *per* Cole, J.

53. Evidence that the defendant left his horse with the plaintiff to be doctored is evidence that the horse was not in ordinary condition. *Carlton v. Hescox*, 107 Mass. 410.

54. Evidence that a railroad train was running

"very fast" is evidence that it was running at a rate of speed more than eight miles an hour. Indianapolis, etc., R. Co. *v.* Peyton, 76 Ill. 340.

55. The jury are the judges of the weight to be given to the petulant observations of an old lady, made when she was in a very bad humor. Shepherd *v.* Cassiday, 20 Tex. 24, 70 Am. Dec. 372.

56. "Upon a question of sexual intercourse, the experience and sagacity of jurors may very well be trusted to run the general logic of the case." Hunt *v.* State, 81 Ga. 140, 7 S. E. Rep. 142, *per* Bleckley, C. J.

57. Proof that on a specified day a valve-box on a steamship contained a rat's nest and some live rats is scarcely consistent with the claim of a continued daily inspection of the valve-box. The Manitou, 116 Fed. Rep. 60.

58. The testimony of the governor of the state that a whore was always of good behavior in public, corroborated by the testimony of others, is sufficient to uphold a finding to that effect. Brown *v.* Memphis, etc., R. Co., 7 Fed. Rep. 51.

59. "Success is, indeed, not always the test of merit; but yet nothing could be more subversive of all good policy in human affairs than the opposite doctrine, that it is a proof of demerit." The Sandringham, 10 Fed. Rep. 556, *per* Hughes, J.

60. Testimony that a certain railroad track was in such condition that it was proper to proceed "without delay or bothering a switch tender to be there" tends to show that there was a switch tender in attendance, because "if he had not been there he could not have been bothered." *Brady v. Chicago, etc., R. Co.*, 114 Fed. Rep. 100, *per* Sanborn, J.

61. "A boy may satisfy his mother that his wet hair is the result of sweat, and not of his going in swimming contrary to her commands, but he will hardly convince her that his back and arms were sunburned, and his shirt turned wrong side out, in crawling through a rail fence backwards." *Farley v. Bateman*, 40 W. Va. 540, 22 S. E. Rep. 72, *per* Dent, J.

62. Evidence that a railroad boss, fighting to save a valuable bridge by breaking up a raft of logs broken loose from its moorings and lodged against a pier of the bridge by a freshet, exclaimed "Damn the logs!" when requested by the owner of the raft not to break it up is not evidence of wilful and wanton destruction of the property. The wonder is he had not said more. *Taylor v. Norfolk, etc., R. Co.*, 131 N. Car. 50, 42 S. E. Rep. 464.

63. The defendant testified that he was a graduate of the University of Michigan, in the law department; that he was licensed to practice law in the courts of Illinois and the federal courts at Chicago;

that he had been admitted to the bar in Texas and had represented various insurance companies in St. Louis for four or five years. *Held*, that there was ample evidence before the jury from which they could find that he was over sixteen years old. *State v. Thomson*, 155 Mo. 300, 55 S. W. Rep. 1013.

Exceptions, Bill of.

See APPEAL AND ERROR, 4.

Execution.

Of contracts, see CONTRACTS, 3.

EXECUTORS AND ADMINISTRATORS.

Duties as to payment of debts.

1. It is the duty of an administrator to pay the debts of the estate, and, if in his power, to use the depreciated money in his hands for that purpose. *Rogers v. Tullos*, 51 Miss. 685.

2. A theory of the law that an administrator may exhaust the personal assets within the state in paying taxes on real estate in a foreign jurisdiction "is only equalled in its world-embracing comprehensiveness by the missionary hymn; places an administrator in this state on the same pedestal where the oration of Phillips places Napoleon the Great, making him 'proof against peril, and empowered with ubiquity.' " *Scudder v. Ames*, 89 Mo. 496, 14 S. W. Rep. 525, *per* Sherwood, J.

Exemptions.

See HOMESTEAD AND EXEMPTIONS.

EXHIBITS.**Teeth of witness.**

In a suit for the infringement of a patent, a witness may, it seems, interpose "an objection to having his teeth marked as exhibits in the cause, preferring, rather, that they should remain in his own mouth, so long, at least, as it continued to be 'a going concern.'" *Rynear Co. v. Evans*, 83 Fed. Rep. 696, *per* Coxe, J.

Expert Witnesses.

See EVIDENCE, 16, 18; WITNESSES, 8-10.

As to insanity, see INSANE PERSONS, 13.

What is whiskey, see INTOXICATING LIQUORS, 17.

Whether person was drunk, see DRUNKENNESS, 19.

In patent cases, see PATENTS FOR INVENTIONS, 9.

FALSE PRETENCES.**Spiritualist charging for seance.**

1. A spiritualist who charges money for holding a seance is guilty of obtaining money by false pretences. *Gordon's Case*, 15 W. N. Cas. (Pa.) 282.

Property included in statute.

2. Board and lodging are not included in the words "money, goods, wares, merchandise, or other property" as used in a statute denouncing the offense. *State v. Black*, 75 Wis. 490, 44 N. W. Rep. 635.

Farmers.

See AGRICULTURAL JURISPRUDENCE.

And banks, see BANKS AND BANKING, 2.

Fellow Servants.

See MASTER AND SERVANT, 8.

FENCES.

See also, STREETS AND HIGHWAYS.

Spitting over, see INSANE PERSONS, 5.

Nature of fence.

1. It seems absurd to say that a fence is a building.
State *v.* Barr, 39 Conn. 41.

Gate.

2. A gate is a part of a fence. Mackie *v.* Central
R. of Iowa, 54 Iowa 540, 6 N. W. Rep. 723.

Fire Escapes.

See MASTER AND SERVANT, 8.

Fire Insurance.

See INSURANCE, 5.

FISH.**“River fish.”**

1. “An eel which is bred and living in a river is a
‘river fish.’” Woodhouse *v.* Etheridge, L. R. 6 C.
P. 570, *per* Willes, J.

Quahaugs and oysters.

2. “It is a well known fact that quahaugs are found

in the mud, and oysters above it." *Griffith v. Savary* (Mass. 1902), 63 N. E. Rep. 426, *per* Lathrop, J.

3. "Oysters have not the power of locomotion any more than inanimate things." *Fleet v. Hageman*, 14 Wend. (N. Y.) 44, *per* Nelson, J.

4. By binding himself not to sell "fish" the obligor agrees not to sell oysters. *Caswell v. Johnson*, 58 Me. 164.

FOOD.

Necessity to eat, see MEDICAL JURISPRUDENCE.

Prepare on Sunday, see SUNDAY, 11.

Provisions, see WORDS AND PHRASES, 51.

Right of guest to carry food from hotel table, see INNS AND INNKEEPERS, 7.

Jurors to eat, see JURY, 16.

Servant to eat, see MASTER AND SERVANT, 3, 4.

Tobacco as, see TOBACCO, 1, 2.

"One cannot eat his cake and have his cake too."
Quoted by Purnell, J., in *In re Eagle*, 99 Fed. Rep. 695.

Who entitled to eat.

1. There are others besides those who have a home or family who have a right to eat. *Reg. v. Albertie*, 20 Can. L. T. 123, *per* McDougall, J.

Gin.

2. The term "food" by 38 & 39 Vict., c. 63, § 2, includes gin. *Webb v. Knight*, 2 Q. B. Div. 530.

Hops.

3. Hops were formerly regarded as a noxious weed, but now they are a victual within the scope of the law against monopolies. *Rex v. Waddington*, 1 East 143, *per* Kenyon, C. J.

Ice.

4. "Ice is neither food, victuals, fare, or provender." *Com. v. Reid*, 175 Mass. 325, 56 N. E. Rep. 617, *per* Loring, J.

Sauce.

5. "Cheese eaten with bread, or ham or chicken eaten in a sandwich, or anchovies or herrings..... would hardly be called a sauce." *Bogle v. Magone*, 152 U. S. 626, 14 Sup. Ct. Rep. 718, *per* Gray, J.

Feeding estoppel.

6. Interest, when it accrues, feeds the estoppel. *Christmas v. Oliver*, 2 Smith Lead. Cas. 775.

Luxurious diet.

7. Mush and milk for supper, and pickled pork boiled with potatoes for dinner, is not a luxurious diet. *Detrick's Appeals*, 117 Pa. St. 452, 11 Atl. Rep. 882, *per* Paxson, J.

Former Jeopardy.

See CRIMINAL LAW, 19.

FORNICATION.

See also ADULTERY.

Remarkable fact.

"It is a remarkable fact that a man could have in-

tercourse with a woman and not know it." *Bales v. State* (Tex. Crim. App. 1898), 44 S. W. Rep. 517, *per Hurt*, P.

FOWLS.

See ANIMALS, 7-10.

FRAUD.

See also FRAUDS, STATUTE OF; FRAUDULENT CONVEYANCES; MAXIMS, 8.

As ground for divorce, see DIVORCE, 5.

Deception by devil, see THEOLOGICAL JURISPRUDENCE, 4.

In sales, see SALES, 4.

Of newspaper publisher, see NEWSPAPERS, 2.

Preacher, see CLERGYMEN, 7.

"An hypocrite with his mouth destroyeth his neighbor." *Quoted* by Burford, C. J., in *Harvey v. Territory* (Okla. 1901), 65 Pac. Rep. 837.

"The voice was the voice of Jacob, but the hand was the hand of Esau." *Quoted* by Clark, J., in *State v. Williams*, 128 N. Car. 573, 37 S. E. Rep. 952.

"The heart is deceitful above all things, and desperately wicked; who can know it?" *Quoted* by Campbell, C. J., in *Singleton v. State*, 71 Miss. 782, 16 So. Rep. 295, 42 Am. St. Rep. 488.

In general.

1. "Some people think it is 'smart' to cheat in swapping horses." *Tatum v. State*, 58 Ga. 408, *per Bleckley*, J.

2. "The fraudulent mind is selfish; it wants to make something by its rascality." *Claffin v. Ballance*, 91 Ga. 411, 18 S. E. Rep. 309, *per* Bleckley, C. J.

3. "Better that fraud should go unpunished, than that the landmarks of the law should be obliterated or obscured." *Leigh v. State*, 69 Ala. 261, *per* Stone, J.

4. "One caught in a net of fraud must feel for the meshes." *Sutton v. Dye*, 60 Ga. 449, *per* Bleckley, J.

5. "A charge of fraud is regarded as something more serious than a rhetorical embellishment." *Nichols v. Rosenfeld* (Mass. 1902), 63 N. E. Rep. 1063, *per* Holmes, C. J.

Nature of fraud.

6. Fraud "is not a thing susceptible of ocular observation." *Burch v. Smith*, 15 Tex. 219, 65 Am. Dec. 154, *per* Wheeler, J.

7. "In law fraud is the finger of death to everything it touches." *Com. v. Kelly*, 9 Phila. (Pa.) 586, 29 Leg. Int. (Pa.) 412, *per* Finletter, J.

8. "Fraud conceals itself. We may with difficulty know 'whence it cometh and whither it goeth.' It 'loveth darkness rather than light, because its deeds are evil.' As the woodsman follows his game by slight indications, as a broken twig or a displaced pebble, so fraud may become apparent by innumerable circumstances, individually trivial, perhaps, but in

their mass 'confirmation strong as proofs of holy writ.' Fraud may hang over the history of the acts of a man like the leaden-hued atmosphere upon the house of Usher, 'faintly discernible but pestilent, an atmosphere which has no affinity with the air of Heaven.' " Merchants' Nat. Bank *v.* Greenhood, 16 Mont. 395, 41 Pac. Rep. 250, 851, *per* De Witt, J.

What constitutes.

9. "There is a class of lies, voluntary, aimless, yet weak and wicked lies, that do not give rise to an action." Green *v.* Bryant, 2 Ga. 66, *per* Nisbet, J.

10. A wife by caressing and kissing her husband makes a representation of a present fact, and if she does not love him such acts may be fraudulent. Basye *v.* Basye, 152 Ind. 172, 52 N. E. Rep. 797.

FRAUDS, STATUTE OF.

What are "goods," see WORDS AND PHRASES, 25.

Necessity for writing.

There has been time enough since the enactment of the statute of frauds for every one to learn that the way to convey land is by writing. Sewell *v.* Holland, 54 Ga. 611, *per* Bleckley, J.

FRAUDULENT CONVEYANCES.

Assistance of wives.

"It is of great importance to protect wives against being impoverished by the arts, importunities, and

undue influence of their husbands ; but it is of equal importance to protect honest creditors against being defrauded by wily husbands who first induce their devoted wives to aid them in getting money, and then, after the money has been enjoyed by the family, aid their devoted wives to repudiate their acts on the ground that these acts were prompted by wifely affection and confidence, and were therefore not free and voluntary." *Hadden v. Larned*, 87 Ga. 634, 13 S. E. Rep. 806, *per* Bleckley, C. J.

Frenchman.

See ANTHROPOLOGY.

FRIENDSHIP.

"Friendship is unknown to law or equity." *Wells v. Houston*, 23 Tex. Civ. App. 629, 57 S. W. Rep. 584, 595, *per* Neill, J.

Funerals.

See BURIAL ; UNDERTAKERS.

GAMING.

See also BILLIARDS AND POOL, 2 ; HUNTING.

By jurors, see NEW TRIAL, 9 ; TRIAL, 7.

Women, see WOMEN, 13.

Chinese gamblers, see CHINESE, 2.

On Sunday, see SUNDAY, 5.

Playing faro on billiard table, see EVIDENCE, 45.

In general.

1. "A common gambler is a common nuisance. Insensible to honor, deaf to pity, and bent upon plunder, he is a human cormorant, more detestable than the bird of prey itself." *Smith v. Wilson*, 31 How. Pr. (N. Y.) 272, *per* Busteed, J.

Action on wager.

2. An action will not lie upon a voluntary wager between two indifferent persons upon the sex of a third, apparently a man. *Da Costa v. Jones*, 2 Cowp. 729, *per* Lord Mansfield.

Crack-loo.

3. Crack-loo is a game not played with dice or dominoes. It is a game played by two or more persons tossing up a coin and letting it fall on the floor; the one whose coin falls and remains nearest a crack in the floor being the winner. *Donathan v. State* (Tex. Crim. App. 1902), 66 S. W. Rep. 781.

Lotteries.

4. A horse-race, though for a stake, is not a lottery. *In re Dwyer*, 14 Misc. (N. Y.) 204, 35 N. Y. Supp. 884.

5. The sale of packages of candy with prizes in the boxes is in violation of a statute against lotteries. *Holoman v. State*, 2 Tex. App. 610, 28 Am. Rep. 439.

Poker and wheel of fortune.

6. "In the game of poker, each party plays for himself. *Laytham v. Agnew*, 70 Mo. 48, *per* Henry, J.

7. Poker is a game of chance. *Kennon v. King*, 2 Mont. 437.

8. Both the game of poker and the wheel of fortune "are no doubt known and understood by gamblers and by many who are not gamblers. The game of poker may be known by a greater number of people, but neither, fortunately, are familiar to the public generally." *People v. Carroll*, 80 Cal. 153, 22 Pac. Rep. 129, *per Works*, J.

Using place—"Public place."

9. The habitual use of a spot in a public park for the receiving of deposits, to return a larger sum on the contingency of a particular horse winning a race, is not the using of a "place" for such purpose. *Doggett v. Catterns*, 19 C. B. N. S. 765, 115 E. C. L. 765.

10. Playing cards in a backhouse intended for the pupils of a school, while the school is in vacation, is not in violation of a statute which prohibits gaming in any public house or any outhouse where people resort. *McDaniel v. State*, 35 Ala. 390.

11. On an indictment for gambling in a lawyer's office it is a question for the jury whether such office was a public place, although a lawyer's office may be, and doubtless many are, very private and quiet and undisturbed. *Parker v. State*, 26 Tex. 204.

Gates.

See FENCES, 2.

GIFTS.

See also LARCENY, 3.

By husband to wife, see HUSBAND AND WIFE, 15.

“Give not thy son and wife, thy brother and friend, power over thee while thou livest, and give not thy goods to another, lest it repent thee, and thou entreat for the same again. As long as thou livest and hast breath in thee, give not thyself over to any. For better it is that thy children should seek to thee, than that thou shouldst stand to their courtesy. In all thy works keep to thyself the pre-eminence, leave not a stain in thine honor. At the time when thou shalt end thy days and finish thy life, distribute thine inheritance.” *Quoted* by Bean, J., in *Thomas v. Thomas*, 24 Oregon 251, 33 Pac. Rep. 565.

Good Will.

See FISH, 4.

GRAMMAR.

In pleading, see PLEADING, 4. .

Punctuation of statute, see STATUTES, 10.

“Very little reliance should be placed upon the capricious rules of grammar.” *Areson v. Areson*, 3 Denio (N. Y.) 458, *per* Barlow, J.

GRAND JURY.

“Grand juries are not generally selected on account of their legal acquirements.” *Wadley v. Com.*, 98 Va. 803, 35 S. E. Rep. 452, *per* Harrison, J.

Guardian and Ward.

See PARENT AND CHILD, 6.

GUARANTY.

“A dead guarantor can make no promise.” *Valentine v. Donohoe-Kelly Banking Co.*, 133 Cal. 191, 65 Pac. Rep. 381.

HABEAS CORPUS.

“Whoever brings the legality of an imprisonment into question by writ of *habeas corpus* should, in the first instance, show as much cause for his attack as he can. He must discharge all his weapons, and not reserve a part of them for use in a future rencounter. He must realize that one defeat will not only terminate the campaign, but end the war.” *Perry v. McLendon*, 62 Ga. 598, *per* Bleckley, J.

HAWKERS AND PEDDLERS.

Peddling is a moral pursuit. *Duluth v. Krupp*, 46 Minn. 435, 49 N. W. Rep. 235, *per* Mitchell, J.

Hearsay.

See EVIDENCE, 6, 11, 12.

Heirs.

See ADOPTION.

Highways.

See STREETS AND HIGHWAYS.

Hogs.

See ANIMALS, 34-36.

HOMESTEAD AND EXEMPTIONS.

De minimis, etc., see MAXIMS, PROVERBS AND ADAGES, 15.

“He that provideth not for his own household is worse than an infidel.” *Quoted* by Platt, J., in *Woodward v. Murray*, 18 Johns. (N. Y.) 400.

Liberal construction of statute.

1. “We prefer the broad humanity of the ‘Cowboy Law’ to the cold and technical construction which would make the intended beneficence of the law a mockery and delusion, and take the bread of the soldier and the wage earner from the mouths of his wife and children to glut the maw of an insatiate creditor.” *Elliot v. Hall*, 2 Idaho 1142, 31 Pac. Rep. 796, 35 Am. St. Rep. 285, *per* Huston, J.

Head of family.

2. “All that a man has to do after securing a homestead as the head of a family is to keep on being the head of a family.” *Nelson v. Commercial Bank*, 80 Ga. 328, 9 S. E. Rep. 1075, *per* Bleckley, C. J.

The family.

3. “No one can be his own family.” *Ellinger v. Thomas*, 64 Kan. 180, 67 Pac. Rep. 529, *per* Doster, C. J.

4. “As the earth is for the use of the family of man, with its membership by marriage and by birth constantly changing, so is the homestead for

the use of the family to whose head it is set apart, no matter what changes may occur in the membership thereof, provided there be at all times one or more persons of the class recognized by law as proper beneficiaries." *Nelson v. Commercial Bank*, 80 Ga. 328, 9 S. E. Rep. 1075, *per* Bleckley, C. J.

Mechanics and laborers.

5. A dentist is not a mechanic. *Whitcomb v. Reid*, 31 Miss. 567, 66 Am. Dec. 579.

6. He is. *Maxon v. Perrott*, 17 Mich. 332, 97 Am. Dec. 191, *per* Cooley, C. J.

7. A photographer is not a "mechanic" within the meaning of the exemption laws, but an artist. *Story v. Walker*, 11 Lea (79 Tenn.) 515, 47 Am. Rep. 305.

8. One engaged in the transportation of merchandise is not carrying on the "business of a mechanic." *Enscoe v. Dunn*, 44 Conn. 93, 26 Am. Rep. 430.

9. A commercial traveler is a gentleman whose profession makes him occupy a much higher station, socially and commercially, than that of a mere day-laborer. *Briscoe v. Montgomery*, 93 Ga. 602, 20 S. E. Rep. 40, 44 Am. St. Rep. 192, *per* Lumpkin, J.

Property exempt - Cart.

10. A vehicle with four wheels, drawn by oxen, suited to the ordinary purposes of husbandry, and employed in the same uses to which carts, in the

common acceptation of the term, are appropriated, is protected from levy and sale by a statute which exempts "one horse or ox cart." *Favers v. Glass*, 22 Ala. 621, 58 Am. Dec. 272.

Horses, cows, etc.

11. A statute exempting a horse exempts a jackass. *Richardson v. Duncan*, 2 Heisk. (49 Tenn.) 220.

12. A horse is not an "implement of trade." *Wallace v. Collins*, 5 Ark. 41, 39 Am. Dec. 359.

13. The exemption of a horse extends to a horse's bridle and saddle. *Cobbs v. Coleman*, 14 Tex. 594.

14. A statute exempting "one cow" exempts butter made from the milk of the debtor's only cow. *Leavitt v. Metcalf*, 2 Vt. 342, 19 Am. Dec. 718.

15. "A milch cow is a necessity to the isolated family living on a small farm miles from market." *Sweet v. Ballentine* (Idaho 1902), 69 Pac. Rep. 995, *per Quarles*, C. J.

Tools, implements, etc.

16. Where a debtor is a gunsmith and a dentist, pianos and guitars are not tools of his trade. *Smith v. Rogers*, 16 Ga. 479.

17. Oxen and horses are not husbandry tools. *Dailey v. May*, 5 Mass. 313.

18. A physician's horse is not a tool or instrument necessary for the exercise of his profession. *Hanna v. Bry*, 5 La. Ann. 651, 52 Am. Dec. 606.

19. A bicycle is neither a "tool" nor apparatus that belongs to the trade or profession of an architect and building superintendent. *Smith v. Horton*, 19 Tex. Civ. App. 28, 46 S. W. Rep. 401.

20. A pool table has not any necessary or proper connection with the saloon business; and a saloon-keeper cannot claim a pool table as exempt property. *Goozen v. Phillips*, 49 Mich. 7, 12 N. W. Rep. 889.

Wearing apparel, furniture, etc.

21. Bags are not articles of wearing apparel, nor bedding. *Shaw v. Davis*, 55 Barb. (N. Y.) 389.

22. "A watch is an eminently useful, if not an absolutely necessary, article of dress." *Sellers v. Bell*, 94 Fed. Rep. 801, *per* McCormick, J.

23. A watch and chain are not household furniture. *Brown v. Edmonds*, 5 S. Dak. 508, 59 N. W. Rep. 731.

24. "A plain gold watch worth not more than fifty dollars is not usually worn habitually by farmers and country merchants as an ornament." *Sellers v. Bell*, 94 Fed. Rep. 801, *per* McCormick, J.

25. A piano is not an article "of household furniture necessary for upholding life." *Dunlap v. Edgerton*, 30 Vt. 224.

26. Where the statute exempts one bed for every two persons, and the family consists of the debtor, his

wife, and three boys, only two beds are exempt, as the three boys may occupy one bed. *Glidden v. Smith*, 15 Mass. 170.

27. An overcoat, although for more than a month it has not been worn, is a necessity. "It would be a very limited construction of the provision of the statute exempting the wearing apparel necessary for immediate use from attachment, which would graduate the relief by the variations of the thermometer, and give one rule for a cold, another for a warm, or another for a wet day." *Peverly v. Sayles*, 10 N. H. 356, *per* Upham, J.

28. A cooking-stove, though of modern invention, is an article "necessary for upholding life," and not an article of ornament or luxury. *Crocker v. Spencer*, 2 D. Chip. (Vt.) 68, 15 Am. Dec. 652.

29. A Japanese folding-chair is equivalent to a family Bible and a pair of earrings. *White v. Nelson*, 2 Dem. (N. Y.) 265.

Value of property.

30. The law does not weigh the value of property alleged to be exempt in "diamond scales." *Clewis v. Malone*, 131 Ala. 465, 31 So. Rep. 596, *per* McClellan, C. J.

HOMICIDE.

See also EVIDENCE, 30 ; TRIAL, 5.

Indictment for, see INDICTMENTS, 5.

“Whoso sheddeth man's blood, by man shall his blood be shed.” *Quoted* by Barculo, J., in *People v. Pine*, 2 Barb. (N. Y.) 566, and in *Walton v. State*, 79 Ga. 446, 5 S. E. Rep. 203; *State v. Baker*, 33 W. Va. 319, 10 S. E. Rep. 639.

“For jealousy is the rage of man and adultery is the highest invasion of property.” *Quoted* by Tyson, J., dissenting, in *Gafford v. State*, 122 Ala. 54, 25 So. Rep. 10.

“Murder most foul, as in the best it is;
But this most foul, strange, and unnatural.”

Quoted by Brannon, J., in *State v. Baker*, 33 W. Va. 319, 10 S. E. Rep. 639.

“The eye of God,
Every path by Murder trod,
Watches, lidless, day and night.”

Quoted by Brannon, J., in *State v. Baker*, 33 W. Va. 319, 10 S. E. Rep. 639.

Manslaughter.

1. “When a man is taken in adultery with another man's wife, if the husband shall stab the adulterer or knock out his brains, this is bare manslaughter; for jealousy is the rage of a man.” *Reg. v. Mawgridge*, J., Kel. 119.

Felonious intent.

2. “When a homicide actually occurs from the voluntary use of a deadly weapon, an intention to kill is very much more certain than it is when the man assaulted is not killed but only shot in the toe.” Gil-

bert *v.* State, 90 Ga. 691, 16 S. E. Rep. 652, *per* Bleckley, C. J.

Self-defense.

3. The fear of death or great bodily harm which will make killing justifiable must be such as would be reasonably entertained by a man of ordinary courage. "The scale of courage varies from Murat to Ague-cheek." Blalack *v.* State, 79 Miss. 517, 31 So. Rep. 105.

4. When a man has an engagement to take a girl home from a quilting party and he starts to escort her home but another man interferes and threatens to shoot, the man having the engagement may get his gun and protect himself and the girl, and if necessary kill the other fellow. Hunter *v.* State, 74 Miss. 515, 21 So. Rep. 305.

Duty to retreat.

5. Where a person is attacked while he is holding a mule he should retreat before killing his assailant, even if he has to let loose the mule. Finch *v.* State, 81 Ala. 41, 1 So. Rep. 565.

Blood stains.

6. It is likely that a murderer's pantaloons would receive blood spots, when the victim's blood has spurted on the walls, window, pictures, and floor. State *v.* Baker, 33 W. Va. 319, 10 S. E. Rep. 639.

Evidence.

7. Evidence that the defendant smoked quite excessively about the time of the alleged murder is immaterial. *Linsday v. People*, 63 N. Y. 143.

8. On the prosecution of a husband for the murder of his wife, evidence that he was the only husband in the neighborhood who milked the cows for his wife is irrelevant. *Hall v. State*, 40 Ala. 698.

Instructions.

9. On the prosecution of a white man for the murder of a man of African lineage, it is proper to instruct the jury that "it is just as much the duty of a jury to convict a white man of the murder of a colored man, as it would be the duty of a jury to convict a colored man for the murder of a white man." *Dolan v. State*, 81 Ala. 11, 1 So. Rep. 707.

Record on appeal.

10. When the record "drips with blood" the court will not adopt a theory that is "so amiable and erroneous" that only the devotion and zeal of advocacy could have generated it. *Marshall v. State*, 59 Ga. 154.

Horses.

See ANIMALS, 37-42.

Hotels.

See BOARDING HOUSES ; INNS AND INNKEEPERS.

House of Correction.

See CRIMINAL LAW, 11.

HUNTING.

Defined, see WORDS AND PHRASES, 31.

On Sunday, see SUNDAY, 7.

1. "The taking of game is not an industry. It is merely a diversion." *In re Deininger*, 108 Fed. Rep. 623, *per* Bellinger, J.

2. Rogues are almost the only game the people of New Hampshire have to pursue, and they are by no means backward in the chase. *Pettingill v. Rideout*, 6 N. H. 454, 25 Am. Dec. 473, *per* Richardson, C. J.

3. In every forensic season the courts have a considerable flock of cases which are tomtits furnished with garbs of feathers ample enough for turkeys, which are to be stripped and dissected for the cabinets of jurisprudence. *Lukens v. Ford*, 87 Ga. 541, 13 S. E. Rep. 949, *per* Bleckley, C. J.

HUSBAND AND WIFE.

See also ADULTERY ; ANIMALS, 9 ; DIVORCE ; MARRIAGE ; MOTHERS-IN-LAW AND THE LIKE.

Confidential communications between, see WITNESSES, 11.

Detesting wife as evidence of insanity, see INSANE PERSONS, 6.

Duress of husband upon wife, see DURESS, 2.

Fraud of wife committed by kissing husband, see FRAUD, 10.

Intervention in action between, see INTERVENTION.

Murder of wife by husband, see HOMICIDE, 8.

“Be to his faults, a little blind,
Be to his virtues, very kind,
And clap your padlock on his mind.”

Quoted by Rodman, J., in *Miller v. Miller*, 78 N. Car. 102.

“I will be master of what is mine own :
She is my goods, my chattels ; she is my house,
My household stuff, my field, my barn,
My horse, my ox, my ass, my anything.”

Quoted by Foster, J., in *Harris v. Webster*, 58 N. H. 480.

In general.

1. “Having a wife is having ‘a family.’” *Kitchell v. Burgwin*, 21 Ill. 40.

2. “A complaisant wife generally will do what a good husband asks her to do.” *In re Baumann*, 96 Fed. Rep. 946, *per* Hammond, J.

3. “A man is no more capable of resisting his wife than he is of resisting himself.” *Smith v. Cuyler*, 78 Ga. 654, 3 S. E. Rep. 406, *per* Bleckley, C. J., individually, and as a bachelor.

4. “The relation of husband and wife clearly implies a strong partiality on the part of the husband towards his wife.” *State v. Watkins*, 9 Conn. 47, 21 Am. Dec. 712, *per* Hosmer, C. J.

5. “Let the wife plaintiff and the husband defend-

ant coquette at will." *Smith v. Cuyler*, 78 Ga. 654, 3 S. E. Rep. 406, *per* Bleckley, C. J.

6. Where husband and wife both work together for mutual benefit it is "not a thing to arouse unwarranted suspicion or to create alarm." *Atkinson v. Plumb*, 45 W. Va. 626, 32 S. E. Rep. 229, *per* Dent, J.

7. "It is very seldom, if ever, that the fondest hopes of wedded bliss are realized by either spouse." *Branscheid v. Branscheid*, 27 Wash. 368, 67 Pac. Rep. 812, *per* Dunbar, J.

8. "There is no combination of any two average, every-day people so powerful for good or evil as that of husband and wife, and if one spouse is angelic it seems not to cripple the combination provided the other is intensely human." *Hadden v. Larned*, 87 Ga. 634, 13 S. E. Rep. 806, *per* Bleckley, C. J.

Why men marry.

9. "A man does not court and marry a woman for the mere pleasure of paying for her board and washing." *Gring v. Lerch*, 112 Pa. St. 244, 3 Atl. Rep. 841, 56 Am. Rep. 314, *per* Paxson, J.

Husband's authority over wife.

10. "The husband must exert his influence and authority over the wife for the correction of her bad habits. . . . It is the law of religion and the law of the country that the husband is intrusted with authority

over his wife. He is to practice tenderness and affection, and obedience is her duty." *Shutt v. Shutt*, 71 Md. 193, 17 Atl. Rep. 1024, *per* Alvey, C. J., *quoting* Lord Stowell.

Rights of husband.

11. "In taking a wife a man does not put himself under an overseer." *Braswell v. Suber*, 61 Ga. 398.

12. A husband has no right to beat his wife even if she is drunken or insolent. *Com. v. McAfee*, 108 Mass. 458, 11 Am. Rep. 383.

13. "Where husband and wife reside together, whatever else she may be the head of, he is the head of the house." *Yarborough v. State*, 86 Ga. 396, 12 S. E. Rep. 650, *per* Bleckley, C. J.

14. A wife is not "the head of the family, however supreme may have been her rule in the management of her children and husband." *Barrett v. Riley*, 42 Ill. App. 258, *per* Harker, J.

15. "A husband can make a gift to his own wife, although she lives in the house with him and attends to her household duties, as easily as he can make a present to his neighbor's wife. This puts her on an equality with other ladies, and looks like progress." *McNaught v. Anderson*, 78 Ga. 499, 3 S. E. Rep. 668, 6 Am. St. Rep. 278, *per* Bleckley, C. J.

16. "In the conduct of his business, the husband may ask his wife's consent; but if he acts without it,

especially in the virtuous and praiseworthy matter of securing or paying an honest debt, the law will excuse him, and let him be bound by what he does alone." *Braswell v. Suber*, 61 Ga. 398, *per* Bleckley, J.

Rights of wife.

17. A wife cannot keep a dog without her husband's consent and participation. *Strouse v. Leipf*, 101 Ala. 433, 14 So. Rep. 667, 46 Am. St. Rep. 122.

18. A wife is entitled to the possession of her marriage certificate. *Creyts v. Creyts* (Mich. 1903), 94 N. W. Rep. 383.

19. It would seem that in all fairness a woman is not entitled to be supported by more than one husband at the same time. *Wetmore v. Wetmore*, 27 Misc. (N. Y.) 700, 59 N. Y. Supp. 586, *per* Scott, J.

20. The domestic industry bestowed by a wife in converting old rags into carpeting should not be discouraged by declaring that when the article is finished, the husband's creditors may seize it. *Heily v. Raymond*, 2 Pearson (Pa.) 216, *per* Pearson, J.

Liability of husband for wife's necessities.

21. False teeth furnished to the wife are necessities for which the husband is liable if he allows her to wear them. *Gilman v. Andrus*, 28 Vt. 241, 67 Am. Dec. 713.

22. "The law does not recognize the dreams, visions, or revelations of a woman in a mesmeric sleep as

necessities for a wife, for which the husband, without his consent, can be held to pay. These are fancy articles, which those who have money of their own to dispose of may purchase, if they think proper, but they are not necessities, known to the law, for which the wife can pledge the credit of her absent husband." *Wood v. O'Kelley*, 8 Cush. (Mass.) 406, *per* Fletcher, J.

Hats.

23. A twelve-and-a-half dollar hat bought by a wife and presented by her to a friend does not come within "necessaries" for which the husband is liable. *Sulter v. Mustin*, 50 Ga. 242.

24. A husband is liable for a winter bonnet which his wife has purchased on his credit, although she already has a winter hat, when it appears that such old hat was worn and faded and out of fashion and had been worn four winters, and it further appears that her husband has seen her wear the new hat without expressing disapprobation; and a husband is liable for a summer hat when his wife's old summer hat has been worn during the previous spring, summer and fall. *Ogden v. Prentice*, 33 Barb. (N. Y.) 160.

Contract by married woman.

25. "When a married woman executes a promissory note, she of course means something." *Deering v. Boyle*, 8 Kan. 525, 12 Am. Rep. 480, *per* Valentine, J.

Married women's acts.

26. "With every enlargement of the rights of married women comes a corresponding increase in their responsibilities." *Wicks v. Mitchell*, 9 Kan. 80, *per* Brewer, J.

27. "A wife is a wife, and not a husband, as she was formerly. Legislative chemistry has analyzed the conjugal unit, and it is no longer treated as an element, but as a compound." *McNaught v. Anderson*, 78 Ga. 499, 3 S. E. Rep. 668, 6 Am. St. Rep. 278, *per* Bleckley, C. J.

28. The legal supremacy of the husband is gone and the sceptre departed from him. The wife "has the legal right and aspires to battle with him in the contests of the forum; to outvie him in the healing art; to climb with him the steps of fame, and to share with him in every occupation." *Martin v. Robson*, 65 Ill. 129, *per* Thornton, J. *Quoted* in *Lane v. Bryant*, 100 Ky. 138, 37 S. W. Rep. 584.

29. "The statute for the protection of the rights of married women, whilst it greatly enlarges the privileges of the wife, does not restrict the liability of the husband. He must pay the same as before, and if he does not, the creditors of the wife can sue and make him pay if he is able. In this particular the modern husband is twice happy. First, he is happy as the quiet spectator of his wife's enjoyment of her prop-

erty ; and again he is happy in paying her debts, or, if he refuses, in being sued and compelled to pay." *Platner v. Patchin*, 19 Wis. 333, *per* Dixon, C. J.

30. Under the new order of things, when a husband induces his wife "to enter into the business of keeping boarders, and promises to let her have all the proceeds, he is allowed to keep his promise if she keeps the boarders. It would seem that the law ought to tolerate him in being faithful to his word in such a matter, even though he has pledged it only to his wife." *McNaught v. Anderson*, 78 Ga. 499, 3 S. E. Rep. 668, 6 Am. St. Rep. 278, *per* Bleckley, C. J.

Liability of wife's separate estate.

31. Pipes, tobacco, and cigars are not within a statute which makes a wife's separate estate liable for "articles of comfort and support of the household," nor are newspapers; all of such articles being mere luxuries. *Bradley v. Murray*, 66 Ala. 269.

Confidential matters.

32. "The real home life of husband and wife is concealed from the public eye." In *Matter of Blakely*, 48 Wis. 294, 4 N. W. Rep. 337, *per* Cole, J.

33. The husband is as much to blame as the wife, if she bears children too fast. *Cariens v. Cariens*, 50 W. Va. 113, 40 S. E. Rep. 335, 55 L. R. A. 932, *per* Brannon, P.

34. It is a breach of the confidential relations exist-

ing between husband and wife for him to communicate to her a loathsome venereal disease. *Polson v. State*, 137 Ind. 519, 35 N. E. Rep. 907.

35. "Temporary bickerings and passionate utterances between husband and wife are consistent with conjugal affection and with a devotion of each to the other in preference to all other persons." *In re Stratton*, 112 Cal. 513, 44 Pac. Rep. 1028, *per* Harrison, J.

Value of wife's society to husband.

36. "There is no exact standard by which to measure the value of a wife's society." *Brown v. Hannibal, etc., R. Co.*, 31 Mo. App. 661, *per* Ellison, J.

37 "A wife that will go to a cornfield to meet her paramour, and have adulterous intercourse with him, on the ground, in a fence corner, is much less valuable to her husband than one who stays at home and demeans herself becomingly." *Ferguson v. Smethers*, 70 Ind. 519, 36 Am. Rep. 186, *per* Biddle, J.

Supervision of courts.

38. "Equity will not feed the husband and starve the wife." *Quoted* by Baker, J., in *Turner v. Turner*, 108 Fed. Rep. 785.

39. However desirable it may be that holy affection should control every thought and act of parties bound in wedlock, the courts do not undertake to define the depth or wealth of that affection or to prescribe the

manifestation of it at all. *Fairchild v. Fairchild*, 43 N. J. Eq. 473, 11 Atl. Rep. 426, *per* Bird, V. C.

40. "It looks too military for a judge to sit in his chambers and there call before him the heads of families and order them peremptorily to do thus and so in the way of furnishing support to their wives and children, though living apart from them, until a suit of some sort has been instituted in some court, either of law or equity." *Yoemans v. Yoemans*, 77 Ga. 124, 3 S. E. Rep. 354, *per* Bleckley, C. J.

Separation.

41. A married woman whose husband has not access to her is a "single" woman. *Reg. v. Pilkington*, 2 El. & Bl. 546, 75 E. C. L. 546; *Reg. v. Collingwood*, 12 Ad. & El. N. S. 681, 64 E. C. L. 681; *Reg. v. Luffe*, 8 East 193.

42. For a husband to fire upon his wife as she runs from him is adopting "a very peculiar method" of inducing her to return to him. *Meyer v. State* (Tex. Crim. App. 1897), 41 S. W. Rep. 632.

43. The "practice of separate sleeping is quite common among married people who can afford it, and is not sufficient, standing alone, to show abstinence from sexual intercourse." *Brown v. Brown*, 62 N. J. Eq. 60, 49 Atl. Rep. 589, *per* Pitney, V. C.

44. "If a woman, who can have no goods of her own to live on, will depart from her husband against

his will, and will not submit herself to him, let her live on charity, or starve in the name of God ; for in such case the law says, her evil demeanor has brought it upon herself, and her death ought to be imputed to her own wilfulness." *Manby v. Scott*, 1 Mod. 124, *per* Hyde, J.

Ice.

See **FOOD**, 4.

On highways, see **STREETS AND HIGHWAYS**, 8.

IDENTITY.

1. All men are not alike. *Wood v. Sawyer*, 1 Phil. L. (61 N. Car.) 251, *per* Reade, J.

2. "All young babies look alike." *State v. Brathovde*, 81 Minn. 501, 84 N. W. Rep. 340, *per* Lewis, J.

Impeachment of Witness.

See **WITNESSES**, 22-24.

INDECENCY.

1. The business of a laundry is not against good morals or public decency. *In re Quong Woo*, 13 Fed. Rep. 229.

2. A woman is not indictable for "running in the common way naked down to the waist," for "nothing appears immodest or unlawful." *Rex v. Gallard*, W. Kel. 163.

3. Photographs showing "rear views" of a twenty-year-old girl, nude from below the shoulders to mid-thigh, are indecent. *Guhl v. Whitcomb*, 109 Wis. 69, 85 N. W. Rep. 142, *per* Dodge, J.

4. An allegation that the defendant printed and published pictures of "naked girls" is not met by proof of pictures of girls naked down to the waist. *Com. v. Dejardin*, 126 Mass. 46, 30 Am. Rep. 652.

5. Entering a court house and urinating against the door-facing therein is using the building "for an indecent purpose." *Smith v. State*, 110 Ga. 292, 35 S. E. Rep. 166.

6. It would "perhaps" be considered indecent now for a judge, as was once the custom, to retire to a corner of the court for a necessary purpose in the presence of ladies. *Reg. v. Webb*, 2 C. & K. 933, 61 E. C. L. 933, *per* Pollock, C. B.

7. A sign 108½ feet long and 50 feet high containing a perfect picture or likeness of a Durham bull, painted on the side of a store, is not so immodest or indecent as to prevent the most fastidious or refined ladies from visiting such store. *Shiverick v. Gunning Co.*, 58 Neb. 29, 78 N. W. Rep. 460.

INDIANS.

See also ANTHROPOLOGY, 2; SCHOOLS AND COLLEGES, 3.

Nature of.

1. "It would hardly be going too far to say that the court judicially knows that a Wyandotte Indian is a human being." *Reed v. State*, 16 Ark. 499, *per English*, C. J.

Indian reservations.

2. "Lake Erie is not an Indian reservation." *Niles v. Cedar Point Club*, 175 U. S. 300, 20 Sup. Ct. Rep. 124, *per Brewer*, J.

INDICTMENTS.

For aiding escape of prisoner, see **ESCAPE**.

In general.

1. Slang and nicknames should not be used in an indictment describing property. *Wesley v. State*, 61 Ala. 282.

Common-law forms.

2. An indictment for vagrancy need not follow common-law forms, and need not charge that the offense was committed "with force and arms," as the gist of the offense is doing nothing. *Waddel v. State*, 27 Ga. 262.

Caption.

3. The defendant was indicted in the Laurel Circuit Court for selling intoxicating liquor and the indictment was headed "Liquor Circuit Court," there being no "Liquor" county in the state. *Held*, the indict-

ment was sufficient. *Mitchell v. Com.*, 106 Ky. 602, 51 S. W. Rep. 17.

Description of offense.

4. An indictment charged that an assault was committed upon a woman big with child by means of certain unlawful, felonious, and false representations, knowingly, feloniously and wilfully made by the defendant, and that he "by reason whereof, feloniously, wilfully and of his malice aforethought, did violently squeeze" said woman in and upon her belly, "commonly called the abdomen." *Held*, that the indictment was insufficient to support an argument. *State v. McBride*, 26 Wis. 409.

5. An indictment which charges that the defendant made an assault upon Agnes Watson and did "cast, throw, and push the said Agnes Watson into a certain canal there situate, wherein there then was a great quantity of water, by means of which casting, throwing, and pushing of the said Agnes Watson in the canal aforesaid by the said Frederick Barber, in the manner and form aforesaid, she, the said Agnes Watson, in the canal aforesaid, with the water aforesaid, was then and there mortally choked, suffocated, and drowned," is bad because it does not allege that she died by means of the defendant's homicidal act. *U. S. v. Barber*, 20 D. C. 79.

Entry of record.

6. The letters A and B placed at the head of the

entry of record of the fact of the grand jury's return of an indictment for assault and battery show that offense with sufficient certainty. *State v. Brown*, 1 Shannon Tenn. Cas. 4.

INFANTS.

Sale of intoxicating liquor to, see INTOXICATING LIQUORS, 11.

Young children as witnesses, see WITNESSES, 5-7.

In general.

1. "A minor is a person." *In re Duguid*, 100 Fed. Rep. 274, *per* Purnell, J.

2. "Every plaintiff must necessarily for twenty-one years of his life have been a minor." *Stallings v. Barrett*, 26 S. Car. 474, 2 S. E. Rep. 483, *per* McIver, C. J.

Necessaries.

3. A bicycle is not a "necessary" for a seventeen-year-old boy. *Pyne v. Wood*, 145 Mass. 558, 14 N. E. Rep. 775.

4. "A bicycle is not an article of necessity for a girl seventeen years of age working as a domestic and living in the house of her employer." *Rice v. Butler*, 25 N. Y. App. Div. 388, *reversed* 160 N. Y. 578, 73 Am. St. Rep. 703, *per* Follett, J.

Newsboys.

5. There are aged boys as well as newsboys, and the court can not necessarily conclude that a person

to whom the appellation of "the boy" or "the news-boy" is given is an infant. *Alexander v. Toronto, etc., R. Co.*, 35 U. C. Q. B. 453, *per Blake*, V. C.

Orphans.

6. A minor whose parents are living and who has a separate estate is an orphan. *Ragland v. Justices*, 10 Ga. 65.

INJUNCTIONS.

When writ lies.

1. The writ of injunction is not "the legal panacea for every ill that may arise in the complicated affairs of man. *Sherman v. Clark*, 4 Nev. 138, 97 Am. Dec. 516, *per Lewis*, J.

2. "A bird that can sing and will not sing must be made to sing."—*Old Adage quoted by Walworth*, C., in *De Rivafinoli v. Corsetti*, 4 Paige (N. Y.) 264, 25 Am. Dec. 532.

3. At the instance of a dweller in a flat the court will not enjoin the use on the floor above of a nine-pound parlor-baby-carriage for the purpose of lulling a teething baby to sleep, even though thereby the plaintiff and his wife are annoyed by day and kept awake at night. *Pool v. Coleman*, 8 Daly (N. Y.) 113.

Equity's fire department.

4. The fire department of a court of equity has no hooks and ladders, engines, and other appliances, or

waterworks with which to put out a fire. *Harrell v. Hannum*, 56 Ga. 508, *per* Bleckley, J.

Allegations of bill.

5. In *Barrow v. Richard*, 8 Paige (N. Y.) 351, which was a suit to enjoin the maintenance of a coal yard, the bill alleged that the coal dust was offensive to the ladies of the neighborhood, and that "this filthy coal dust settles upon their door steps, thresholds and windows, and enters into their dwellings, and into their carpets, their cups, their kneading troughs, their beds, their bosoms, and their lungs; discoloring their linen and their otherwise stainless raiment and robes of beauty and comfort, defacing their furniture, and blackening, besmearing and injuring every object of utility, of beauty, and of taste." *Held*, that making due allowance for the "coloring" which the pleader had given to such a naturally "dark picture" the bill stated grounds for relief.

INNS AND INNKEEPERS.

See also **BOARDING HOUSES.**

What is an inn.

1. A steamboat on which passengers are given board and lodging while being carried is not an inn. *Clark v. Burns*, 118 Mass. 275, 19 Am. Rep. 456.

2. A shop which is used for the manufacture and sale of tobacco, snuff, and cigars is not a refreshment

saloon or restaurant. *State v. Hogan*, 10 Fost. N. H. 268.

Distinction between boarding stable and hotel.

3. The care of beasts in a boarding stable "is not so very different from the care of men in a hotel—there is some difference, not always very great, in respect to the provender that is provided for each, but the business is carried on in much the same way." *In re Chesapeake Oyster, etc., Co.*, 112 Fed. Rep. 960, *per* Hallett, J.

What constitutes entertainment.

4. A guest may be "entertained" although he does not sit down while taking refreshment. *Howes v. Board of Inland Revenue*, L. R. 1 Exch. Div. 385, *per* Mellish, J.

Rights of guests.

5. "The man who lives in a hotel must not be surprised if roused from sleep by the heavy foot of some guest passing by his door at an unseasonable hour." *Pool v. Higginson*, 8 Daly (N. Y.) 113, *per* Van Hoesen, J.

6. A guest is not entitled to insist on occupying a bedroom for the purpose of sitting up all night, so long as the innkeeper is willing and offers to furnish him with a proper room for that purpose. *Fell v. Knight*, 8 M. & W. 269.

7. "A guest at a hotel may satisfy his appetite

when he goes to the table. He may partake of anything that is placed before him, but after filling his stomach, he may not also fill his pockets, and carry away the food he cannot eat." *Com. v. Miller*, 131 Pa. St. 118, 18 Atl. Rep. 938, *per Paxson, C. J., dissenting.*

Liability of guest.

8. "When one walks into a restaurant, orders something to eat, and then undertakes to leave without paying for it, he should expect some remonstrance on the part of the proprietor." *Vance v. State* (Ark. 1902), 68 S. W. Rep. 37, *per Riddick, J.*

INSANE PERSONS.

See also DEAF AND DUMB PERSONS.

Idiot as trustee, see TRUSTS AND TRUSTEES.

In general.

1. Intelligent persons "are able to read contemporary history and still preserve their mental balance." *State v. Jackson*, 9 Mont. 508, 24 Pac. Rep. 213, *per De Witt, J.*

2. A court of equity will not measure the size of men's understanding. *Watkins v. Stockett*, 6 Har. & J. (Md.) 435, *per Archer, J.*

3. A "paranoiac" is one who has a mania for litigation and an ungovernable desire and anxiety to be successful. This species of lunacy or mania is more

common among attorneys than litigants. *Bateman v. Ryder*, 106 Tenn. 712, 64 S. W. Rep. 48.

Rights of "dull" persons.

4. "Even persons deprived of ordinary discretion, children, or idiots, are entitled to the protection of the laws, and a man who is ineffably dull may not, for that reason alone, be robbed with impunity." *Bartlett v. State*, 28 Ohio St. 669, *per* Wright, J.

Evidence.

5. For a woman to spit over a fence is no evidence of insanity. *Lee v. State* (Tex. Crim. App. 1901), 64 S. W. Rep. 1047.

6. "A man may detest and hate his wife very much, and yet not be a madman." *Hall v. Semple*, 3 F. & F. 337, *per* Crompton, J.

7. The fact that a person is nicknamed "Crazy" is not evidence that he is a lunatic. *Baird v. New York Cent., etc., R. Co.* (Supm. Ct. App. Div.), 44 N. Y. Supp. 926.

8. Deafness will account for many apparent evidences of insanity. *McKim's Estate*, 9 Pa. Co. Ct. 209.

9. For a man to swear while trying to button his shirt-collar is not to be regarded as a symptom of softening of the brain. *Keithley v. Keithley*, 85 Mo. 217, *per* De Armond, C.

10. The fact that a man marries a second wife during the lifetime of the first is not sufficient to convict him of insanity. *Smith's Case*, 22 Pa. Co. Ct. 487, *affirmed* 12 Pa. Super. Ct. 649.

11. "The opinions of witnesses as to what is undue and unnatural excitement in time of battle can not generally afford ground for safe conclusions as to a person's mental condition years afterwards." *People v. Garbutt*, 17 Mich. 9, 97 Am. Dec. 162, *per* Cooley, C. J.

12. When a widow is anxious to marry and shows the love letters of one suitor to another and boasts about her conquests, such conduct does not evince insanity. If it did lunatic asylums might have to be very much enlarged. *Cole v. Cole*, 5 Sneed (37 Tenn.) 57, 70 Am. Dec. 275, *per* Caruthers, J.

13. The court permitted a witness to answer the following question: "You may state as to whether or not the scientific idea of insanity draws the line closer than the legal idea of insanity." To which the witness answered: "That is possibly the case; I would not say—well, the courts and doctors don't agree as to the definition of insanity." *Held*, that "the question was absurd and the answer meaningless," and that such stuff could neither help the state nor harm the defendant. *Wheeler v. State*, 158 Ind. 687, 63 N. E. Rep. 975.

Lunatic asylums.

14. A private lunatic asylum is not an offensive business. *Doe v. Bird*, 2 Ad. & El. 161, 29 E. C. L. 57.

INSTRUCTIONS.

By justice of the peace, see **JUSTICES OF THE PEACE**.

On prosecution for murder, see **HOMICIDE**, 9.

In general.

1. In approaching the question whether an instruction was correct it is necessary to ascertain what the instruction was. *Goodman v. Simonds*, 20 How. (U. S.) 343, *per* Clifford, J.

2. "It is not every headnote that is fit to be given to the jury." *Thompson v. Davitte*, 59 Ga. 472, *per* Bleckley, J.

3. An instruction should not be given merely because it is adroitly drafted and creditable to the ingenuity of the counsel who prepared it. *Zimmerman v. Hannibal*, etc., R. Co., 71 Mo. 476, 2 Am. & Eng. R. Cas. 191.

4. "The better practice is to decline charging refined speculations, and give only coarse, sharp-cut law. What shall come to the jury as evidence is for the court. What it is worth when it arrives is for the jury. They can discern its true value with spare assistance from the bench. The judge may well assume that they have a fair aptitude for their share

of the common business." *Moughon v. State*, 57 Ga. 102, *per* Bleckley, J.

Excessive number requested.

5. It is trying to the patience of the judge to have an immense "acreage" of instructions asked of him. *State v. Grugin*, 147 Mo. 39, 47 S. W. Rep. 1058, 71 Am. St. Rep. 553, *per* Sherwood, J.

6. It is not error to refuse to mark as given a catalogue of instructions amounting to a small treatise, based upon a view of the case which is not warranted by the evidence. *Smith v. Sauerwein*, 1 Mo. App. 269, *per* Bakewell, J.

As to duties of jury being simple.

7. On a prosecution for seduction the court should not instruct the jury that their duties are simple, but error in giving such an instruction is cured by giving sixteen other elaborate instructions. *State v. Curran*, 51 Iowa 112, 49 N. W. Rep. 1006.

Defining "reasonable doubt."

8. The expression "beyond a reasonable doubt" is refined gold which needs no gilding—a lily which needs no painting. *Burt v. State*, 72 Miss. 408, 16 So. Rep. 342, 48 Am. St. Rep. 563.

As to use of common sense by jury.

9. It is not error to instruct the jury to use common sense. *People v. Kelly*, 132 Cal. 430, 64 Pac. Rep. 563.

10. After jurors have been told that they are to be judges of the law as well as of the facts, it is error to inform them that "common sense is perhaps the juror's best guide." *Wright v. State*, 69 Ind. 163, 35 Am. Rep. 212.

As to presumption of guilt from flight.

11. On a criminal prosecution it is error to instruct the jury that "the wicked flee, when no man pursueth, but the innocent are as bold as a lion." *Hickory v. U. S.*, 160 U. S. 408, 16 Sup. Ct. Rep. 327.

Inflammatory charge.

12. On a prosecution for rape it is error for the trial judge to refer to the failure of the woman's kinsmen to rush to her rescue, as follows: "If John Brown is guilty and you say he is, I will condemn him to be hanged as guilty; and I will add, if my duty so declared, if my duty to our mother, North Carolina, required, I would hang him, as many, now in the sound of my voice, have seen me in time past, by orders from the powers above me representing North Carolina, have a man shot. This is painful, but it is necessary. It must be done fairly and manfully or the law must perish. If this man is guilty and he is allowed to escape, then the chastity of every woman in Robeson county is put at the mercy of every villain that may attempt it. Especially is this the case, if the men of her family should be as cowardly as the wretches who, knowing that

their kinswoman was in the hands of ruffians, and having arms in their hands, to the disgrace of manhood failed to rush to her rescue. May the God of the fatherless, the protector of the widow and the orphan, consume them with the lightnings of His wrath! I would sentence them more cheerfully than any criminal ever convicted before me." *State v. Brown*, 67 N. Car. 435.

Directing verdict.

13. The theory upon which it is proper to instruct the jury to return a verdict when the evidence is uncontradicted is that "prevention is better than cure." *Moore v. McKenney*, 83 Me. 80, 21 Atl. Rep. 749, 23 Am. St. Rep. 753, *per* Walton, J.

14. "Go along and find the defendant guilty" is an erroneous instruction when the evidence is altogether circumstantial. *Sims v. State*, 43 Ala. 33.

INSURANCE.

See also BENEFICIAL ASSOCIATIONS.

In general.

1. "Insurance is business, and not elaborate and expensive trifling." *Mobile Fire Department Ins. Co. v. Coleman*, 58 Ga. 251, *per* Bleckley, J.

2. "Some companies, chartered by the legislature as insurance companies, were organized for the purpose of providing one or two of their officers, at

headquarters, with lucrative employment—large compensation for light work—not for the purpose of insuring property; for the payment of expenses, not of losses.” *DeLancey v. Rockingham Farmers’ Mut. F. Ins. Co.*, 52 N. H. 581, *per Doe, J.*

Typography of policies.

3. Seldom has the art of typography been so successfully diverted from the diffusion of knowledge to the suppression of it as in some insurance policies. *DeLancey v. Rockingham Farmers’ Mut. F. Ins. Co.*, 52 N. H. 581, *per Doe, J.*

Premium claim.

4. A premium claim that is worthless and uncollectable may be said to be “used up.” *Maine Mut. Marine Ins. Co. v. Neal*, 50 Me. 301.

Fire insurance.

5. “Fire-works” do not come within the meaning of the terms “family groceries, wines, liquors, tobacco, and cigars,” as used in a policy of insurance. *Georgia Home Ins. Co. v. Jacobs*, 56 Tex. 366.

Accident insurance.

6. A person who carries accident insurance may take part in the ordinary games of the country or cross a crowded street. *McNevin v. Canadian R. Acc. Ins. Co.*, 2 Ont. L. Rep. 521, *per Osler, J.*

7. The bite of an insect is “external, violent and accidental,” within the meaning of a policy of insur-

ance against bodily injury, although "perhaps" the force of it was not as great as the bite or sting of a rattlesnake. *Omberg v. U. S. Mut. Acc. Assoc.*, 101 Ky. 303, 40 S. W. Rep. 909, 72 Am. St. Rep. 413.

8. One who carries accident insurance is not bound, before going on a train, to ascertain all the minutiae connected with the management and running of trains. *Tooley v. Railway Passenger Assur. Co.*, 3 Biss. (U. S.) 399, 4 Bigelow L. & Acc. Ins. Rep. 34.

Tornado insurance.

9. In an action to recover on a tornado-insurance policy, a denial of damage by tornado is inconsistent with special allegations that the insured building was ruined by reason of the fact that a heavy wind forced a steamboat against it. *Queen Ins. Co. v. Hudnut Co.*, 8 Ind. App. 22, 35 N. E. Rep. 397.

Interest.

Feeding estoppel, see **FOOD**, 6.

INTERNATIONAL LAW.

Spain, with all her infirmity, is not to be put out of the pale of civilized nations. *Murray v. Toland*, 3 Johns. Ch. (N. Y.) 569, *per* Kent, C.

INTERPLEADER.

"The general rule is that the complainant in a bill of interpleader merely stirs up a war and then leaves

the real belligerents to fight it out, he retiring from the scene to repose in dignified ease, holding, the while, the prize which is to reward the victor." *Andrew v. Halliday*, 63 Ga. 263, *per* Bleckley, J.

INTERVENTION.

Where an amicable action is instigated by a wife against her husband and the litigation is a sort of comedy, the court will not permit new parties to intervene and convert it into a tragedy. *Smith v. Cuyler*, 78 Ga. 654, 3 S. E. Rep. 406, *per* Bleckley, C. J.

INTOXICATING LIQUORS.

See also DRUNKENNESS.

As furniture, see WORDS AND PHRASES, 22.

Bar on vessel, see MARITIME LAW, 4.

Blind tiger, see ANIMALS, 45.

Contract to refrain from using, see CONTRACTS, 4, 6.

Gin as food, see FOOD, 2.

Prescription of dentist for, see DENTISTS.

Sale by druggists, see DRUGGISTS.

"The Lord causeth to grow the wine that maketh glad the heart of man."

"Give strong drink unto him that is ready to perish, and wine to those that be of heavy hearts."

"Drink no longer water, but use a little wine for thy stomach's sake and thine often infirmities."

Quoted by Perkins, J., in Calder v. Sheppard, 61 Ind. 219.

“The Goddess knocking at the little door,
’Twas opened by a woman, old and poor ;
Who, when she asked for water, gave her ale,
Brewed long, but well preserved from being stale.”

Quoted by Chancellor Walworth, in *Nevin v. Ladue*,
3 Den. (N. Y.) 437.

In general.

1. “Whiskey is inviting.” *Gault v. State*,
34 Ga. 533, *per* Harris, J.

2. “The court takes judicial notice of the fact that champagne, as ordinarily served from an ice chest or in coolers, is liable to lose its labels before the bottle is shown to the customer.” *Von Mumm v. Wittemann*, 85 Fed. Rep. 966, *per* Townsend, J.

Ale.

3. “Ale is not comprehended within the term wines.” *People v. Crilley*, 20 Barb. (N. Y.) 246, *per* Strong, J.

Beer.

4. “A man must be almost a driveling idiot who does not know what beer is.” *Briffitt v. State*, 58 Wis. 39, 16 N. W. Rep. 39, 46 Am. Rep. 621, *per* Orton, J.

Jamaica ginger.

5. “It is a matter of common knowledge that Jamaica ginger is an intoxicant and a spirituous liquor, and it is hardly more necessary to introduce testimony

of that fact than it would be of whiskey." *Mitchell v. Com.*, 106 Ky. 602, 51 S. W. Rep. 17.

"Empire Tonic Bitters."

6. Sixteen ozs. senna leaves, 8 ozs. calamus root, 4 ozs. stor annis root, 24 ozs. orange peel, $\frac{1}{2}$ oz. oil orange, 12 ozs. cassia buds, 8 ozs. coriander seed, 16 ozs. allspice, 6 ozs. orris root, 80 ozs. sugar, 24 ozs. cherry bark, 8 ozs. cardomin seed, 1 oz. gentian root, 80 ozs. prickly ash bark, 16 ozs. prickly ash burrs, 4 ozs. spirits lavender, 4 ozs. fluid ext. angelica, comp., 17 gall. dist. water, 25 gall. cologne spirits, 15 gall. angelica wine, and 10 gall. sherry wine, mixed and called Empire Tonic Bitters, constitute an intoxicating beverage. *State v. Wright*, 20 Mo. App. 412.

Mixed drinks.

7. "Cases might be imagined where 'smashes' would not stimulate, nor 'cobblers' quicken, nor 'ju-leps' invigorate." *Searle v. Adams*, 3 Kan. 515, 89 Am. Dec. 598.

Illegal sales.

8. A statute making it an offense to "dispose of" intoxicating liquor is not violated by giving a person several drinks of whiskey, because when one person gives another a drink of whiskey there is no "change of property or ownership." *Reynolds v. State*, 73 Ala. 3.

9. "It matters not what name dealers or consumers apply to the illicit fluid, so long as the arbitrary name can be translated into such familiar English as 'rye whiskey.'" *Kinnebrew v. State*, 80 Ga. 232, 5 S. E. Rep. 56, *per* Bleckley, C. J.

10. Even though a man's servant girl is the divinity of a rude shrine where liquor is sold in violation of law, and he is merely her attending spirit to warn thirsty devotees where to drink and at whose feet to lay their tribute, and he is not the deity and she the mere ministering priestess, he is amenable as a promoter of forbidden libations. *Forrester v. State*, 63 Ga. 349, *per* Bleckley, J.

Sale to minors.

11. The sale of intoxicating liquor to a minor is unlawful, even though he is over six feet in height. *State v. Hartfiel*, 24 Wis. 60.

Sale at back door.

12. The law with reference to a tippling house "is of force as well at the back as at the front door; it surrounds such a house." *Harvey v. State*, 65 Ga. 568.

Sale on Christmas eve.

13. On a prosecution for selling intoxicating liquor to an Indian in violation of a United States statute it is no defense that it was sold on Christmas eve. *U. S. v. Miller*, 105 Fed. Rep. 944.

Prescription for "throat trouble."

14. Defendant, a druggist, on Sunday filled the following prescription for "throat trouble": "Pleasantville, Ind., March 4th, 1889. John W. Edwards—Let Benj. Howard have $\frac{1}{2}$ pint of whiskey and glycerine for medicinal purposes. Repeat as needed. Wm. A. Fleming." *Held*, that the prescription was too vague and uncertain to justify the sale. *Edwards v. State*, 121 Ind. 450, 23 N. E. Rep. 277.

Quantity sold.

15. Where the evidence shows that the quantity sold was a "drink," and the amount paid for it was ten cents, the jury may find that the quantity sold was less than a quart. *Hamilton v. State*, 103 Ind. 96, 2 N. E. Rep. 299, 53 Am. Rep. 491. See also *Sappington v. Carter*, 67 Ill. 482.

16. The court will take judicial knowledge of the fact that where a glass of whiskey was sold for ten cents the sale was of a quantity less than three gallons. *State v. Blands* (Mo. 1903), 74 S. W. Rep. 3.

Expert evidence.

17. A policeman is an excellent judge of whiskey, and when he has tasted a liquor is able to say whether it is whiskey or not. *Hollingsworth v. Atlanta*, 79 Ga. 503, 5 S. E. Rep. 37.

Experiments with liquor by jury.

18. Where there is an issue as to whether certain liquor is intoxicating it is not proper to allow the jury

to take some of the liquor with them into the jury room for the purpose of experimenting with it and finding out whether or not it is intoxicating. *Wadsworth v. Dunnam*, 117 Ala. 661, 23 So. Rep. 699.

Inventions.

See PATENTS FOR INVENTIONS.

Jail.

See PRISONS.

Continuance because counsel is in, see CONTINUANCES, 1.

JUDGES.

See also COURTS ; JUSTICES OF THE PEACE.

Sleeping during trial, see NEW TRIAL, 7.

1. A judge does not have to be a fool. *Per* Greene, C. J., in *Jackson v. Winn* (MS.), *quoted* in *Harland v. Territory*, 3 Wash. Ter. 131, 13 Pac. Rep. 453.

2. "Credulity is not esteemed a paramount virtue of the judicial mind." *Rankin v. Jauman* (Idaho 1895), 39 Pac. Rep. 1111, *per* Huston, J.

3. "That judge is the best who relies as little as possible on his own opinion." *Harris v. Harris*, 31 Gratt. (Va.) 13, *per* Burks, J., *citing* *Broom's Leg. Max.* 84.

4. A judge "is not a mere moderator of a town meeting." *Patton v. Texas, etc., R. Co.*, 179 U. S. 658, 21 Sup. Ct. Rep. 275, *per* Brewer, J.

5. Before a judge is translated to the Supreme Court he shares in the fallibility which is inherent in all courts except those of last resort. *Broome v. Davis*, 87 Ga. 584, 13 S. E. Rep. 749, *per* Bleckley, C. J., *reversing* a judgment by Lumpkin, J.

JUDGMENTS.

See also RES JUDICATA.

Allowing appropriation of water, see WATERS AND WATERCOURSES, 4.

By default, see DEFAULTS.

On appeal, see APPEAL AND ERROR, 19.

1. "Some one must lose." *Wailes v. Cooper*, 24 Miss. 208, *per* Yerger, J.

2. "It frequently occurs that, upon verdicts or findings in strict accord with the law and the evidence, judgments contrary to both law and evidence are rendered." *Rosenzweig v. Frazer*, 82 Ind. 342, *per* Woods, J.

3. A party is the Adam of those in privity with him and when there is a judgment against him the privies are lost. *Gunn v. Wades*, 62 Ga. 20, *per* Bleckley, J.

4. "No party, plaintiff or defendant, is permitted to stand his case before the court on some of its legs, and if it falls, set it up again on the rest in a subsequent proceeding; and thus evade the bar of the former judgment. It is the body of a case and not cer-

tain of its limbs only that the final judgment takes hold upon." *Perry v. McLendon*, 62 Ga. 598, *per* Bleckley, J.

Judicial Notice and Knowledge.

See EVIDENCE, 22-40.

As to champagne, see INTOXICATING LIQUORS, 2.

Credibility of negro, see WITNESSES, 14.

Newspapers, see NEWSPAPERS, 3.

Stenographers, see STENOGRAPHERS.

Use of tobacco, see TOBACCO, 3.

Of constitution, see CONSTITUTIONAL LAW, 2.

Height of man, see MEDICAL JURISPRUDENCE, 9.

Longevity, see DEATH, 2.

Necessity of smoking on Sunday, see SUNDAY, 12.

Quantity of whiskey in drink, see INTOXICATING LIQUORS, 16.

Weight of artificial leg, see EVIDENCE, 26.

Jurisdiction.

See COURTS, 11, 12.

Jurisprudence.

See AGRICULTURAL JURISPRUDENCE; LAW; MEDICAL JURISPRUDENCE; THEOLOGICAL JURISPRUDENCE.

JURY.

See also GRAND JURY.

Misconduct of, see NEW TRIAL, 5, 9-17.

Province of Court and Jury, see ANIMALS, 41; CONTRIBUTORY NEGLIGENCE, 4, 5; EVIDENCE, 47.

In general.

1. "Trial by jury is the most cherished, if not the most valuable, institution we have derived from our Saxon ancestors." *Swift v. Fitzhugh*, 9 Port. (Ala.) 39, *per* Ormond, J.

2. "The liquor-seller has the same right to an impartial jury and a fair trial as any other man." *Brockway v. Patterson*, 72 Mich. 122, 40 N. W. Rep. 192, *per* Morse, J.

3. Jurors are the best known doctors of doubt. *Cent. R. Co. v. Ferguson*, 63 Ga. 83.

4. "No question of fact is too difficult for a modern jury." *Pittsburg, etc., R. Co. v. Taylor*, 104 Pa. St. 306, 49 Am. Rep. 580, *per* Paxson, J.

5. "Something must, and ought to be, trusted to the intelligence of the jury." *State v. Bruce*, 106 N. Car. 792, 11 S. E. Rep. 475, *per* Clark, J.

6. "Under certain circumstances jurors may use their eyes as well as their ears." *Garvin v. State*, 52 Miss. 207, *per* Chalmers, J.

7. "It is not the province of juries to supplant the use of dictionaries." *Kennon v. King*, 2 Mont. 437, *per* Wade, C. J.

Qualifications.

8. "The day has passed when blank ignorance and stupidity in a jurymen were his best qualifications for

service." *State v. Jackson*, 9 Mont. 508, 24 Pac. Rep. 213, *per De Witt*, J.

9. "A person is not shown to be incompetent to sit as a juror upon the trial of a thief by showing that he would give less credit to a thief than to one engaged in an honest calling." *U. S. v. Duff*, 19 Blatchf. (U. S.) 9, *per Benedict*, J.

10. The husband of a juror's step-daughter is not related to the juror, but only to the juror's wife, the rule being as follows :

"The groom and bride each comes within
The circle of the other's kin ;
But kin and kin are still no more
Related than they were before."

Central R., etc., Co. v. Roberts, 91 Ga. 513, 18 S. E. Rep. 315, *per Bleckley*, C. J.

Prejudice.

11. One who believes that the defendant should be burned or hanged without trial is prejudiced. *Faulkner v. State* (Tex. Crim. App. 1901), 65 S. W. Rep. 1093.

Challenges.

12. The statutory right to challenge jurors requires that they should be driven in single file and not in platoons. A party is entitled to take jurors one by one and wrestle with them single-handed. *Williams v. State*, 60 Ga. 367, 27 Am. Rep. 412.

Presumptions as to jurors.

13. "Jurors usually have common sense." *Row- and v. De Camp*, 96 Pa. St. 493.

14. Juries are presumed to be able to make calculations. *Louisville, etc., R. Co. v. Davis*, 99 Ala. 593, 12 So. Rep. 786.

15. "Jurors are presumed to have common sense, and to understand common English." *Hamilton v. People*, 29 Mich. 173, *per Campbell, J.*

Right of jurors to eat.

16. "In this degenerate age, jurors must eat." *Brinson v. Faircloth*, 82 Ga. 185, 7 S. E. Rep. 923.

Conduct in jury room.

17. Parliamentary rules do not go in the jury room, and it is misconduct for the foreman of a jury, while a criminal case is being deliberated upon, to refuse to allow any juror to express an opinion upon the case until he had first arisen and addressed the foreman as chairman and been recognized by him. *Hutchins v. State*, 140 Ind. 78, 39 N. E. Rep. 243.

JUSTICE.

See also MAXIMS, PROVERBS AND ADAGES, 9.

1. Whether or not there is any justice in August, its light is at that season often in the wane. *Atty. Gen. v. Sheffield Gas Consumers' Co.*, 3 De G. M. & G. 304, *per Knight Bruce, L. J.*

2. "No wise and orderly mind can reasonably complain when he gets the common justice of the country, though he may wish that the country were wiser in order that its justice might be better." *Wistar v. Philadelphia*, 3 Grant Cas. (Pa.) 311, *per* Lowrie, C. J.

JUSTICES OF THE PEACE.

1. Justices of the peace "are, proverbially, not very learned in the law." *Moore v. State*, 72 Ind. 358, *per* Elliott, J.

2. "Learning in the law is not declared a qualification for the office" of justice of the peace. *Heard v. Harris*, 68 Ala. 43, *per* Brickell, C. J.

3. Justices of the peace "can not generally be presumed to be acquainted with the principles and rules of courts of equity." *Stevenson v. Miller*, 2 Litt. (Ky.) 307.

4. Justices of the peace should not charge the jury because of their "ignorance of the law, as well as propriety." *Bendheim Brothers v. Baldwin*, 73 Ga. 594, *per* Blandford, J.

5. A justice of the peace who is too old to be affected by a writ of prohibition directed to him is too old to administer the law even in a justice's court. *Bullard v. Thorpe*, 66 Vt. 599, 30 Atl. Rep. 36, 44 Am. St. Rep. 867.

6. "A justice of the peace is generally a man of consequence in his neighborhood ; he writes the wills, draws the deeds, and pulls the teeth of the people ; also he performs divers surgical operations on the animals of his neighbors." *Bendheim Brothers v. Baldwin*, 73 Ga. 594, *per* Blandford, J.

7. "In a justice court, local government is realized in its last analysis. This tribunal is our primary—most rudimentary organ of home rule. It is the *ne plus ultra* of judicial simplicity It seems designed merely to put the defendant in that state of mind in which a man a little roused and irritated exclaims, 'what's the matter? what's up? what's to pay?' Practically, as experience teaches, when curiosity is thus excited, both memory and inquiry become active, and it is not long until the surprised individual knows clearly and definitely 'what it's all about.' " *Atlanta, etc., R. Co. v. Hudson*, 62 Ga. 679, *per* Bleckley, J.

Justification.

See ASSAULT AND BATTERY.

KIDNAPPING.

"It is unreasonable to say that a young woman, eighteen years of age, of ordinary intelligence, who will agree to secretly leave her residence after the family retires for the night, and meet a married man for the ostensible purpose of taking a buggy ride in the dark, knowing at the time that he is at least par-

tially intoxicated, does not suspect his motives." *Eberling v. State*, 136 Ind. 117, 35 N. E. Rep. 1023, *per Coffey, J.*

Laches.

See EQUITY, 6 ; LIMITATION OF ACTIONS.

LAKES.

Nature of.

1. A natural lake is property, but it is not a house or building. *Com. v. Lambrecht*, 3 Pa. Co. Ct. 323, *per Arnold, J.*

2. Lake Erie is not a tract of land heretofore surveyed and patented, nor a navigable river. *Niles v. Cedar Point Club*, 175 U. S. 300, 20 Sup. Ct. Rep. 124, *per Brewer, J.*

LANDLORD AND TENANT.

Division of rent, see PARTITION, 2.

What may be let.

1. "An entire floor, or a series of rooms, or even a single room, may doubtless be let for lodgings." *White v. Maynard*, 111 Mass. 250, 15 Am. Rep. 28.

Reservation in demise.

2. Where a demise reserves "all timber trees and other trees, but not the annual fruit thereof," the words "other trees" do not extend to apple trees and consequently they are not within the exception. *Bullen v. Denning*, 5 B. & C. 842.

Premises infested by bedbugs.

3. Where leased premises are uninhabitable in consequence of being infested by bedbugs, the tenant has a right of action against the landlord. *Snodgrass v. Newman*, 10 Quebec Super. Ct. 433.

Use of premises.

4. Where apartments are taken for the purpose of carrying on therein the business of a perfumer and the tenant converts the premises into a brothel, such use does not at law avoid the lease. *Feret v. Hill*, 15 C. B. 207, 80 E. C. L. 207.

Yielding up premises in good repair.

5. The leaving of nine cart-loads of ashes, brickbats, and rubbish by a tenant, on quitting the demised premises, is no breach of his agreement peaceably to yield up the premises in good, tenantable repair. *Thorndike v. Burrage*, 111 Mass. 531.

LARCENY.

Meaning of word "hook," see WORDS AND PHRASES, 30.

"Swipe," see WORDS AND PHRASES, 55.

"Pants," see WORDS AND PHRASES, 46.

What constitutes.

1. A servant clandestinely taking his master's corn, though to give to his master's horses, is guilty of larceny. *Rex v. Morfit*, R. & R. C. C. 307.

2. "An indictment for larceny could not be sup-

ported against a churchwarden for stealing the bell ropes of the parish church of which he is the churchwarden." *Jackson v. Adams*, 2 Bing. N. Cas. 402, *per* Tindal, C. J.

3. It is not larceny for one who is the housekeeper and niece of the person with whom she lives to give away children's outgrown clothes when such gift is made openly. *Mielenz v. Quasdorf*, 68 Iowa 726, 28 N. W. Rep. 41.

Commission by two persons.

4. It is possible for two persons jointly to steal six eggs, one pair of stockings and one undershirt. *State v. Adam*, 105 La. 737, 30 So. Rep. 101.

5. "To a complete larceny by A there may be added, by a sort of criminal accretion, another complete larceny by B." *Minor v. State*, 56 Ga. 630, *per* Bleckley, J.

Laundries.

See INDECENCY.

Constitutional right to conduct, see CONSTITUTIONAL LAW, 9, 10.

LAW.

See also CONSTITUTIONAL LAW ; JUSTICE ; MAXIMS, PROVERBS AND ADAGES ; STARE DECISIS.

Rules of court, see RULES, 2.

In general.

1. The law is not like paint. *Com. v. Meyers*, 8 Pa. Co. Ct. 435, *per* Reeder, J.

2. "Law is, or ought to be, a progressive science." *State v. Buchanan* (Wash. 1902), 70 Pac. Rep. 52, *per Dunbar, J.*

3. "The law is not made for the protection of degenerates and paranoiacs." *Hilson Co. v. Foster*, 80 Fed. Rep. 896, *per Coxe, J.*

4. There should be no violation of law to do right when right can be done and the law observed. *Shores v. Brooks*, 81 Ga. 468, 8 S. E. Rep. 429, 12 Am. St. Rep. 332.

5. "In order to get good law from a court, you have to put on pressure, and constrain it to deal with the exact questions in their ultimate form." *Smith v. Cuyler*, 78 Ga. 654, 3 S. E. Rep. 406, *per Bleckley, C. J.*

6. The fact that the trial judge was ignorant of a rule of law for which the appellant contends is strong presumptive evidence that it does not exist. *Andrews v. Andrews*, 85 Ga. 276, 11 S. E. Rep. 771, *per Bleckley, C. J.*

Morality of law.

7. "The general morality of the law is higher than many good people suppose. . . . They are not without conscience, but without sufficient light; the law is better than they take it to be." *Barnes v. Mays*, 88 Ga. 696, 16 S. E. Rep. 67, *per Bleckley, C. J.*

8. "Good sense, good morality, and good law are

one and the same so long as they are not sundered violently by legislation or ignorantly by judicial error." *Hull v. Myers*, 90 Ga. 674, 16 S. E. Rep. 653, *per* Bleckley, C. J.

The common law.

9. "The common law rests not on the code of chivalry." *Ashbrook v. Frederick Avenue R. Co.*, 18 Mo. App. 290, *per* Philips, J.

10. The wisdom of the common law is so profound as to be quite undiscernible. *Illinois, etc., R. Co. v. Johnson*, 77 Miss. 727, 28 So. Rep. 753.

Skepticism in law.

11. "There is no less skepticism in law than in theology." The law is "called upon again and again for a fresh revelation of some legal truth which has already been revealed." *Central R. Co. v. Phinazee*, 93 Ga. 488, 21 S. E. Rep. 66, *per* Bleckley, C. J.

In hard cases.

12. "Hard cases.....make shipwreck of the symmetry of the law." *Ex p. Batesville, etc., R. Co.*, 39 Ark. 82, *per* Smith, J.

13. "It is the duty of all courts of justice to take care, for the general good of the community, that hard cases do not make bad law." *East India Co. v. Paul*, 7 Moo. P. C. 111, *per* Lord Campbell. *Quoted by Harlan, J., in U. S. v. Clark*, 96 U. S. 37.

14. "The hardship of the particular case is no reason for melting down the law. For the sake of fixedness and uniformity, law must be treated as a solid, not as a fluid. It must have, and always retain, a certain degree of hardness, to keep its outlines firm and constant. Water changes shape with every vessel into which it is poured; and a liquid law would vary with the mental conformation of judges, and become a synonym for vagueness and instability." *Southern Star Lightning Rod Co. v. Duvall*, 64 Ga. 262, *per* Bleckley, J.

Law's imperfections.

15. "Every lawyer must acknowledge that the law is not always logical at all." *Quinn v. Leathem*, L. R. (1901) A. C. 495, *per* Halsbury, L. C.

16. "Common sense is always good law, but law is not always common sense." *Medlin v. Balch*, 102 Tenn. 710, 52 S. W. Rep. 140, *per* Wilkes, J.

17. "The law is not an exact science." *Dobson v. Central R. Co.* (Supm. Ct. Spec. T.), 78 N. Y. Supp. 82, 38 Misc. 582, *per* Wright, J.

18. The law is not always what it ought to be according to the views of learned men. *Kansas City v. Whipple*, 136 Mo. 475, 38 S. W. Rep. 295, 58 Am. St. Rep. 657.

19. "Our law is not a philosophical system. It is a growth, having its origin in the customs and usages of half-barbarous tribes." *Foster v. Retail Clerks'*

International Protective Assoc., 78 N. Y. Supp. 860, 39 Misc. 48, *per* Andrews, J.

Ownership of law.

20. "A public law is not the property of any man." State *v.* Aloe, 152 Mo. 466, 54 S. W. Rep. 494, *per* Valliant, J.

21. "A person has no property, no vested interest, in any rule of the common law." Munn *v.* Illinois, 94 U. S. 113, *per* Waite, C. J.

Headnotes.

22. A headnote, even though not written by the reporter, is not law except so far as it is warranted by the judgment of the court upon the facts of the case. Denham *v.* Holeman, 26 Ga. 182, 71 Am. Dec. 198.

LAWYERS.

See also ATTORNEY AND CLIENT.

Danger to public of practising law, see NUISANCES, 4.

Law partnerships, see PARTNERSHIP, 1.

Libel of, see LIBEL AND SLANDER, 5, 6.

Office of, as public place, see GAMING, 11.

Paranoiacs, see INSANE PERSONS, 3.

"Who knows of law nor text nor margent,
Calls Singleton his brother sargent."

Quoted by Sherwood, J., in State *v.* Associated Press, 159 Mo. 410, 60 S. W. Rep. 91.

In general.

1. "A good bar may be said to be a necessity of

a good court." *In re Goodell*, 39 Wis. 232, 20 Am. Rep. 42, *per* Ryan, C. J.

2. "As to attorneys, it can hardly be supposed that there will ever be a time when their scarcity will greatly endanger the public safety." *Lockwood's Case*, 9 Ct. Cl. 346, *per* Nott, J.

3. Great lawyers are "frequently unsuccessful, for the reason that being generally expensive luxuries they are apt to be employed only in desperate cases." *Hunter v. Bosworth*, 43 Wis. 583, *per* Ryan, C. J., *quoting* "a great judge."

Requisites of lawyers.

4. The three main requisites of a lawyer are learning, diligence, and integrity; but the greatest of these is integrity. *In re Duncan*, 64 S. Car. 482, 42 S. E. Rep. 433, *per* Benet, J.

5. "He who knoweth the law and knoweth not the reason thereof, soon forgetteth his superfluous learning." *Per* Lord Coke. *Quoted in In re Cobb*, 112 Fed. Rep. 655.

6. "When a man becomes a lawyer he does not have to lose his wits." *Per* Greene, C. J., in *Jackson v. Winn* (MS.), *quoted in Harland v. Territory*, 3 Wash. Ter. 131, 13 Pac. Rep. 453.

7. "Familiarity with repeated decisions and statutory law might be of assistance to counsel and benefi-

cial to their clients." *Harrison v. Brewster*, 38 W. Va. 294, 18 S. E. Rep. 568, *per Dent*, J.

8. "No attorney is bound to know all the law ; God forbid that it should be imagined that an attorney, or a counsel, or even a judge, is bound to know all the law." *Montriau v. Jefferys*, 2 C. & P. 113, 12 E. C. L. 50, *per Abbott*, C. J.

9. "It is not enough for an attorney that he be honest. He must be that and more. He must be believed to be honest. It is absolutely essential to the usefulness of an attorney that he be entitled to the confidence of the community wherein he practices. If he so conducts in his profession that he does not deserve that confidence, he is no longer an aid to the court nor a safe guide to his clients. A lawyer needs, indeed, to be learned. It would be well if he could be learned in all the learning of the schools. There is nothing to which the wit of man has been turned that may not become the subject of his inquiries. Then, of course, he must be specially skilled in the books and the rules of his own profession. And he must have prudence, and tact to use his learning, and foresight, and industry, and courage." *Fairfield County Bar v. Taylor*, 60 Conn. 11, 22 Atl. Rep. 441.

Nature of lawyers.

10. "No lawyer can discuss propositions except in a combination of law and facts." *Hannah v. State*, 11 Lea (79 Tenn.) 201, *per Turney*, J.

11. Lawyers know no more about shorthand than about Chinese or Sanscrit characters. *Shepherd v. Snodgrass*, 47 W. Va. 79, 34 S. E. Rep. 879, *per* Brannon, J.

12. Where an attesting witness to an instrument is an attorney, it is not correct to describe him in an affidavit as a "gentleman." *Tuton v. Sanoner*, 3 H. & N. 280, 4 Jur. N. S. 365.

Modesty of lawyers.

13. "As a rule, the bar has not suffered from excessive modesty in presenting its claims, nor has the bench been unduly prodigal in allowing them." *Stevens v. Central Nat. Bank*, 24 Misc. (N. Y.) 344, 53 N. Y. Supp. 193, *per* Clearwater, J.

As promoters of litigation.

14. "One-half of the litigation with which the courts are burdened results directly or remotely, from the misadvice of attorneys." *U. S. v. Buntin*, 10 Fed. Rep. 730, *per* Baxter, C. J.

Case lawyers.

15. Contempt for the strictly "case lawyer" is of ancient origin. *In re Cobb*, 112 Fed. Rep. 655, *per* Purnell, J.

Corporation lawyers.

16. "Corporation lawyers have the opportunity, and are quite able and capable of taking care of them-

selves." *Latta v. Lonsdale*, 107 Fed. Rep. 585, 52 L. R. A. 479.

Unprofessional conduct.

17. Seduction of his typewriter by a lawyer, and continued illicit intercourse with her are not unprofessional conduct and do not impair his good moral character. *State v. Byrket*, 4 Ohio Dec. 89.

When lawyers will be unnecessary.

18. "By the time the questionable arts of the advocate, which are practiced to persuade and delude the judge as well as the jury, are eliminated from the profession there will be little use for lawyers—the millenium will have come." *Gulf, etc., R. Co. v. Curb*, 66 Fed. Rep. 519, *per* Caldwell, J.

Leases.

See LANDLORD AND TENANT.

LEGISLATURE.

See also STATUTES.

In general.

1. "Legislatures are not grammar schools." *Whipple v. Judge*, 26 Mich. 342, *per* Christiancy, C. J.

2. "No man's life, liberty, or property are safe while the legislature is in session." *Quoted* as a "saying" in *Anonymous*, 1 Tuck. (N. Y.) 247.

3. "The wisdom of the last century seems but folly in the present. The experience of the sages and venerable men who have preceded us is as nothing, compared to the intuition of the Solons of this 'progressive' age." *Holmes v. Holmes*, 4 Barb. (N. Y.) 295, *per* Barculo, J.

4. Const. Wyo., art. 3, § 8, which provides that "no senator or representative shall, during the term for which he was elected, be appointed to any civil office under the state," does not make the holding of a seat in the legislature a misdemeanor such as will disbar an otherwise reputable attorney from the practice of his profession during his incumbency of the office. *Ross v. State*, 8 Wyo. 351, 57 Pac. Rep. 924.

Right of legislature to legislate.

5. The legislature cannot be restrained from legislating on any subject. *Story v. Jersey City, etc., Plank Road Co.*, 16 N. J. Eq. 13, 84 Am. Dec. 134.

Influence of lobby.

6. "Professional solicitors, who infest the lobby, are ever ready, for a sufficient consideration, to impose on the good nature of honest but often careless legislators by the suggestion of any necessary falsehood." *Baltimore v. Pittsburgh, etc., R. Co.*, 1 Abb. (U. S.) 9, *per* Grier, J.

Careless legislation.

7. It is doubtful whether the framers of statutes

consult the Bible, or the works of any ancient authors, for the meaning of terms. *People v. Crilley*, 20 Barb. (N. Y.) 246, *per* Strong, J.

8. It must be assumed that "some" of the distinguished lawyers in the United States senate in drafting a statute employ terms in their usual and ordinary legal acceptance. *In re Oliver*, 109 Fed. Rep. 784.

9. It is not to be supposed that grave members of the legislature are so familiar with the language used in the games they prohibit as to use gambling terms with technical accuracy. *Cobb v. State*, 45 Ga. 11.

LIBEL AND SLANDER.

"A good name is rather to be chosen than great riches, and loving favor rather than silver and gold." *Quoted* by Sanborn, J., in *Times Pub. Co. v. Carlisle*, 94 Fed. Rep. 762,

What is actionable.

1. It is libelous to write of a man that he carried on "rocky" conversation in the presence of unprotected women. *Holston v. Boyle*, 46 Minn. 432, 49 N. W. Rep. 203.

2. It is libelous for a telegraph company to transmit the following message: "Slippery Sam, your name is pants. [Signed] Many Republicans." *Peterson v. Western Union Tel. Co.*, 65 Minn. 18, 67 N. W. Rep. 646.

3. It is no libel to write of a physician that he has met homeopathists in consultation. *Clay v. Roberts*, 9 Jur. N. S. pt. 1, 580, 8 L. T. 397, 11 W. R. 649.

4. To write of a minister that he lost his situation because of that "Beecher business of his" is libelous. *Bailey v. Kalamazoo Pub. Co.*, 40 Mich. 251.

5. Formerly a "dunce" was a learned man, but the meaning of the word has so changed that now it is actionable to call a lawyer a dunce. *Clarges v. Rowe*, Freem. K. B. 280.

6. It is not libelous to write of an attorney that he did not present his bill until after his client's death. *Reeves v. Templar*, 2 Jur. 137.

7. Plaintiff declared on the following words: "Sir Thomas Holt struck his cook on the head with a cleaver, and cleaved his head, the one part lay on the one shoulder, and another part on the other." *Held*, that the words are not actionable because it is not averred that the cook was killed. *Holt v. Astgrigg*, Cro. Jac. 184.

Imputations upon women.

8. Good qualities are not imputed to a woman by saying that "she is ornrier than two hells." *Wimer v. Allbaugh*, 78 Iowa 79, 42 N. W. Rep. 587, 16 Am. St. Rep. 422.

9. It is actionable to say of an unmarried school-mistress that she borrowed and read "Dr. Bate's

True Marriage Guide"—a trashy production such as its title indicates. *McAtee v. Valandingham*, 75 Mo. App. 45.

10. It is libelous to write of a woman that she was wooed by a chewing-gum agent with gum of the most succulent sort, that every time she worked her jaws she felt her love for the sweet man growing, and that when she was voluntarily presented with a whole box of gum, she hesitated no longer. *O'Toole v. Post Printing, etc., Co.*, 179 Pa. St. 271, 36 Atl. Rep. 288.

11. It is libelous *per se* to write of a woman as follows: "Thine eyes are like black walnuts in a frog pond. Thy teeth are like a flock of sheep just fresh from the wash, whereof each one bears twins. Thy temples are like lemon peels in thy locks. Thy garments are as the smell of old cheese. Set me as a seal upon thy heart and upon thy arm. Turn thine eyes from me, for thy heart ravishes my heart. Thy friendship to me is far better than wine. You forget the time you stopped at my house to warm your breasts, and the time you came up the orchard to see my plum butter. Thy hair is as fine-cut tobacco." *McMurry v. Martin*, 26 Mo. App. 437.

12. A patent-medicine advertisement declared that a woman over seventy years old was bitten by a cat, and that the poison had the following effects: "She had a tendency to imitate the actions of a cat. She would get down on the floor, crawl around, and en-

deavor to catch rats. Then she would purr, mew, and do a great many things suggestive of the characteristics of a cat." It further asserted that she obtained a new lease of life from the use of the medicine. *Held*, that this was libelous *per se*. *Stewart v. Swift Specific Co.*, 76 Ga. 280, 2 Am. St. Rep. 40.

13. In *Cherry v. Des Moines Leader*, 114 Iowa 298, 86 N. W. Rep. 323, an action was brought by one of three public performers calling themselves "Cherry Sisters" upon the following writing: "Effie is an old jade of 50 summers, Jessie a frisky filly of 40, and Addie, the flower of the family, a capering monstrosity of 35. Their long skinny arms, equipped with talons at the extremities, swung mechanically, and anon waved frantically at the suffering audience. The mouths of their rancid features opened like caverns, and sounds like the wailings of damned souls issued therefrom. They pranced around the stage with a motion that suggested a cross between the *danse du ventre* and fox trot—strange creatures with painted faces and hideous mien. Effie is spavined, Addie is stringhalt, and Jessie, the only one who showed her stockings, has legs with calves as classic in their outlines as the curves of a broom handle." The defendant showed that he was not actuated by malice and was merely criticising a coarse public performance, and it was held that it was proper to direct a verdict against the plaintiff.

Licenses.

Of physicians, see PHYSICIANS AND SURGEONS, 9.

LIENS.

See also MECHANICS' LIENS.

Maritime liens, see MARITIME LAW, 6.

1. "The words 'equitable lien' are intensely undefined." *Brunsdon v. Allard*, 2 El. & El. 19, 105 E. C. L. 19, *per* Erle, J.

2. "It may well be doubted whether the laborer, who built fires whilst a man of genius wrote a poem, would have a lien either upon the rhythm or the manuscript, although he may have contributed to the comfort and convenience of the poet." *Dano v. Mississippi, etc., R. Co.*, 27 Ark. 564, *per* McClure, C. J.

LIMITATION OF ACTIONS.

1. A debtor with an upright conscience is not hurt by paying a just debt which is barred. *Langston v. Aderhold*, 60 Ga. 376.

2. "Marriage may be postponed, but not the statute of limitations." *Wellborn v. Weaver*, 17 Ga. 267, 63 Am. Dec. 235, *per* Lumpkin, J.

3. A new question under the statute of limitations, in coolness and restoring power, so far exceeds cobblers and juleps that "when one is presented the 'fine auld Irish gentleman's' resurrection under the circumstances detailed in the song becomes as palpable

a reality as the 'Topeka constitution or the territorial capital at Mineola.' The powers of a galvanic battery upon the vital energies are wholly incomparable to it." *Searle v. Adams*, 3 Kan. 515, 89 Am. Dec. 598, *per Crozier*, C. J.

LOGS AND LOGGING.

See also WOODS AND FORESTS.

1. "The best season to cut timber, as well as to prune fruit trees, is during the summer." *Patterson v. M'Causland*, 3 Bland (Md.) 69, *per Bland*, C.

2. "Neither a log nor any number of logs floating upon the surface of a stream, uncontrolled and uncontrollable, is navigation or commerce." *Harrigan v. Connecticut River Lumber Co.*, 129 Mass. 580, 37 Am. Rep. 387.

Lost Property.

See ANIMALS, 20.

Lotteries.

See GAMING, 4, 5.

Mails.

See POST OFFICE ; TROVER AND CONVERSION.

Malpractice.

See PHYSICIANS AND SURGEONS, 4-6.

Manslaughter.

See HOMICIDE, 1.

MARITIME LAW.

See also ADMIRALTY.

In general.

1. A vessel is not lying at anchor when it is fastened to a pier. *Walsh v. New York Floating Dry Dock Co.*, 77 N. Y. 448.

2. "A vessel already in the water cannot be launched." *Homer v. Schooner Lady of the Ocean*, 70 Me. 350, *per* Danforth, J.

3. "A vessel full of passengers cannot be said to be empty of passengers." *Perrine v. Chesapeake, etc., Canal Co.*, 9 How. (U. S.) 189, *per* Taney, C. J.

4. A bar on board a vessel is not essential to the navigation of the vessel or to the safety and comfort of the passengers. *The Robert Dollar*, 115 Fed. Rep. 218, *per* Hanford, J.

Abandonment of sinking ship.

5. "A seaman may abandon a sinking ship." *Hart v. Boston, etc., R. Co.*, 40 Conn. 524, *per* Park, J.

Maritime liens.

6. "The maritime law gives liens for necessary supplies and repairs to a foreign ship, for a purpose; and that purpose is to give wings and legs to ships to enable them to get on and complete their voyages for the good of all concerned." *The Robert Dollar*, 115 Fed. Rep. 218, *per* Hanford, J.

MARRIAGE.

See also BIGAMY ; BREACH OF MARRIAGE PROMISE ; DIVORCE ; HUSBAND AND WIFE.

Constitutional right to marry, see CONSTITUTIONAL LAW, 5.

Postponement of, see LIMITATION OF ACTIONS, 2.

Right of wife to marriage certificate, see HUSBAND AND WIFE, 18.

“Castaque privatæ veneris connubia læta

Cognita sunt, prolemque ex se videre creatam.”

Quoted by counsel in *Nichols v. Nichols*, 31 Vt. 328, 73 Am. Dec. 352.

In general.

1. Love matches exist only in the imagination of novelists. *Brown v. Westbrook*, 27 Ga. 102, *per* Lumpkin, J.

2. “Marriage is a discipline as well as a delight.” *Stevens v. Stevens*, 8 R. I. 557, *per* Durfee, J.

3. “It seems to be generally admitted that marriages are not more fruitful now than in past ages.” *Williams' Case*, 3 Bland (Md.) 186, *per* Bland, C.

4. “If matrimony produces bankruptcy, it is all wrong ; but, if bankruptcy produces matrimony, it is all right.” *In re Steed*, 107 Fed. Rep. 682, *per* Purnell, J.

5. “The holy state of matrimony was ordained by Almighty God in Paradise, before the fall of

Man, signifying to us that mystical union which is between Christ and his Church." *Manby v. Scott*, 1 Mod. 124, *per* Hyde, J.

6. "The principle of reproduction stands next in importance to its elder born correlative, self-preservation, and is equally a fundamental law of existence. It is the blessing which tempered with mercy the justice of expulsion from Paradise. It was impressed upon the human creation by a beneficent Providence, to multiply the images of himself, and thus to promote his own glory and the happiness of his creatures. Not man alone, but the whole animal and vegetable kingdom are under an imperious necessity to obey its mandates. From the lord of the forest to the monster of the deep—from the subtlety of the serpent to the innocence of the dove—from the celastic embrace of the mountain kalmia to the descending fructification of the lily of the plain, all nature bows submissively to this primeval law. Even the flowers which perfume the air with their fragrance, and decorate the forests and fields with their hues, are but 'curtains to the nuptial bed.'" *Com. v. Stauffer*, 10 Pa. St. 350, 51 Am. Dec. 489, *per* Lewis, P.

Right to marry. •

7. "A person, as a citizen, has a legal right to marry." *People v. Wheaton College*, 40 Ill. 186, *per* Lawrence, J.

8. "A rich old man may marry a young wife, or a

handsome and obliging housekeeper or maidservant." Turner *v.* Hand, 3 Wall. Jr. (U. S.) 88, *per* Grier, J.

9. It is not one of the natural rights of man to marry whom he may choose. State *v.* Jackson, 80 Mo. 175, 50 Am. Rep. 499, *per* Henry, J.

10. "In this country, at least, it is still open to every woman, however poor or humble, to obtain a secure and independent position in the community by marriage." The Oriflamme, 3 Sawyer (U. S.) 397, *per* Deady, J.

The contract.

11. A marriage contract is not one which falls within the "ordinary calling" of the parties to the same. Hayden *v.* Mitchell, 103 Ga. 431, 30 S. E. Rep. 287.

12. When a man asks a woman to marry him it is not indelicate for her to give him a categorical answer, and most men expect to get a plain answer. Cole *v.* Holliday, 4 Mo. App. 94, *disapproving* a dictum to the contrary in Wells *v.* Padgett, 8 Barb. (N. Y.) 323.

Consideration.

13. "Money and wealth are too often the moving causes that lead to matrimonial alliances." Olivet *v.* Whitworth, 82 Md. 258, 33 Atl. Rep. 723, *per* Boyd, J.

Presumption of marriage.

14. In a great majority of cases women do get

married; but the law cannot make maiden ladies *femmes covert* by mere presumption and without their consent. *Erschine v. Davis*, 25 Ill. 251.

15. An entry by a man in his diary, "Hand in hand through life we go and share each other's joy and woe," followed by cohabitation with a woman, will not afford a conclusive presumption of marriage. *Norcross v. Norcross*, 155 Mass. 425, 29 N. E. Rep. 506.

MASTER AND SERVANT.

See also PRINCIPAL AND AGENT.

Wages or salary, see WORDS AND PHRASES, 58.

"No servant can serve two masters, for either he will hate the one and love the other, or else he will hold to the one and despise the other." *Quoted* by McIlvane, J., in *Bell v. McConnell*, 37 Ohio St. 396, 41 Am. Rep. 528, and *cited* in *Cannell v. Smith*, 142 Pa. St. 25, 21 Atl. Rep. 793.

Rights of master.

1. "An employer ought to have some rights which his employees are bound to respect." *Ball v. Hauser* (Mich. 1902), 89 N. W. Rep. 49.

Scope of employment.

2. Where a servant is employed as a bottle washer the running of an elevator is not incident to his employment. *Dallemand v. Saalfeldt*, 175 Ill. 310, 51 N. E. Rep. 645, 67 Am. St. Rep. 214.

Right of servant to eat.

3. "When a schedule is made of nineteen consecutive hours of service on a train, and no provision is made by the company for their supply of food, it is understood that the employees must of necessity, at times during the service, leave their places to get their meals." *Pennsylvania Co. v. McCaffrey*, 139 Ind. 430, 38 N. E. Rep. 67, *per* Dailey, J.

4. "Ordinarily, eating dinner by an employee is not an incident to the service in which he is engaged for his employer," but when a section hand on a railroad is allowed only thirty minutes in which to eat his dinner, his act in eating it on the premises is an incident to the service. *Cleveland, etc., R. Co. v. Martin*, 13 Ind. App. 485, 41 N. E. Rep. 1051.

Personal injuries to servant.

5. Where a servant loses his life through a mistake of the master his widow should not lose her case by a mistake of the court in granting a nonsuit. *Devine v. Savannah, etc., R. Co.*, 89 Ga. 541, 15 S. E. Rep. 781, *per* Bleckley, C. J.

Assumption of risks.

6. Where a servant is employed in a white lead factory and is warned of the danger of lead poisoning and advised to "use Pearline," he assumes the risk of being poisoned by white lead. *Berry v. Atlantic*

White Lead, etc., Co., 30 N. Y. App. Div. 205, 51 N. Y. Supp. 602.

Contributory negligence.

7. A servant, by sleeping in a room the ceiling of which is cracked, is not guilty of such contributory negligence as will prevent a recovery for injuries received by the falling of the plaster. *Siedentop v. Buse*, N. Y. App. Div. 1897, 47 N. Y. Supp. 809.

Fellow servants.

8. "Two servants of a common master may be at work within five feet of each other, or a less distance, and still not be fellow servants. A wall may be between them, and the one may have no opportunity of knowing how the other performs his work. In that case they are not fellow servants, in a legal sense." *Dryburg v. Mercur Gold Min., etc., Co.*, 18 Utah 410, 55 Pac. Rep. 367, *per* Zane, C. J.

Statute requiring fire escapes.

9. A statute requiring fire escapes upon factory buildings is not violated by screwing down the windows which open onto the fire escapes. *Huda v. American Glucose Co.*, 154 N. Y. 474, 48 N. E. Rep. 897.

MATHEMATICS.

See also PLEADING, 6.

1. "Three cannot be held to be two-thirds of six." *Swindell v. State*, 143 Ind. 153, 42 N. E. Rep. 528, *per* Jordan, J.

2. "In law, as in mathematics, things that are equal to the same thing are equal to one another." *Johns v. Johns*, 29 Ga. 718, *per Lumpkin, J.*

3. "A portion is not the whole." *Thrasher v. Ballard*, 35 W. Va. 524, 14 S. E. Rep. 232.

4. The word "thousand" as applied to rabbits means "twelve hundred." *Smith v. Wilson*, 3 B. & Ad. 728, 23 E. C. L. 169.

5. Where "double" damages are recoverable the proper method of doubling the damages is not to add to the sum found by the jury one-half of that sum. *Withington v. Hilderbrand*, 1 Mo. 280.

6. "The figure 2, according to its established meaning, represents two units or whole numbers, and the figure 4 represents four units or whole numbers." *Power v. Bowdle*, 3 N. Dak. 107, 44 Am. St. Rep. 511, 54 N. W. Rep. 404, *per Wallin, J.*

MAXIMS, PROVERBS AND ADAGES.

See also LAW.

1. "Partial evil is universal good." *Tucker v. Harris*, 13 Ga. 1, 58 Am. Dec. 488, *per Lumpkin, J.*

2. "The law abhors an inconvenience." *Amoskeag Mfg. Co. v. U. S.*, 6 Ct. Cl. 99, *per Nott, J.*

3. "The law is no respecter of persons." *Seams v. State*, 84 Ala. 410, 4 So. Rep. 521; *Gould v. Atlanta*, 60 Ga. 164.

4. "Reason ceases to be the guide when the law is known." *Leoni v. State*, 44 Ala. 110, *per* Peters, J.

5. "It's a poor rule that will not work both ways." *Quoted* by Davidson, J., in *Bice v. State*, 37 Tex. Crim. 38, 38 S. W. Rep. 803.

6. "All things that are lawful are not expedient." *Quoted* by Collier, C. J., in *Huckabee v. May*, 14 Ala. 263.

7. "Drowning men will catch at straws." *Quoted* by Freedman, J., in *Coffey v. Home L. Ins. Co.*, 35 N. Y. Super. Ct. 314.

8. "Covin doth suffocate right." *Quoted* by Ryan, C. J., in *Price v. Wisconsin Marine & F. Ins. Co.*, 43 Wis. 267.

9. "Justice is the same whether due from one man or a million, or from a million to one man." *Chisholm v. Georgia*, 2 Dall. (U. S.) 419, *per* Jay, C. J.

10. "Whoever suffers, the principles of justice must prevail." *Lockhard v. Beckley*, 10 W. Va. 87, *per* Johnson, J.

11. "It is more important that an end should be put to litigation than that justice should be done in every case." *Mooney v. People*, 96 Ill. App. 622.

12. It is not an established maxim of the law that "it is better that ninety-nine guilty men should escape than that one innocent man should be punished," *Lowe v. State*, 88 Ala. 8, 7 So. Rep. 97.

13. "Those who put their own shoulders to the wheel without waiting for help from Hercules generally succeed." U. S. Electric Lighting Co. v. Leiter, 19 D. C. 575, *per* Hagner, J.

14. "When one gets his due ignorantly, if he is not hurt by his ignorance it is the same as if he acted with knowledge." Coleman v. Jenkins, 78 Ga. 605, 3 S. E. Rep. 444, *per* Bleckley, C. J. *Quoted* in Butts v. Whitney, 96 Ga. 445, 23 S. E. Rep. 397.

15. Where a statute exempts from execution a horse, martingales are exempt along with the horse, being within the maxim *de minimis non curat lex*. Cobbs v. Coleman, 14 Tex. 594.

MAYHEM.

1. A woman's throat is not one of her limbs or members within a statute against maiming. Rex v. Lee, 1 Leach C. C. 51.

2. "No injury could be committed upon a woman which would amount to castration." Kitchens v. State, 80 Ga. 810, 7 S. E. Rep. 209, *per* Bleckley, C. J.

3. A statute making it an offense to wound or disfigure "the private parts of another" is applicable to the private parts of a woman since "whether for the sake of utility or appearance" hers are as much within the letter and spirit of the statute as those of a man. Kitchens v. State, 80 Ga. 810, 7 S. E. Rep. 209, *per* Bleckley, C. J.

Measures.

See WEIGHTS AND MEASURES.

MECHANICS' LIENS.

See also PLEDGES, 1.

In general.

1. "There is nothing logical about mechanics' claims." *Gordon v. Norton*, 186 Pa. St. 168, 40 Atl. Rep. 312, *per* Mitchell, J.

Upon what obtainable.

2. The word "building" includes neither floating docks, ships, horse-rakes, nor reaping-machines. *Coddington v. Beebe*, 31 N. J. L. 477.

3. A swing erected in fair grounds, consisting of posts set in the ground and braced, and connected at the top by a crosspiece with rings in it, is neither a "building" nor a "structure" within Code Civ. Pro. Cal., §§ 1183, 1192. *Lothian v. Wood*, 55 Cal. 159.

MEDICAL JURISPRUDENCE.

See also IDENTITY ; INSANE PERSONS ; PATENT MEDICINES ; PHYSICIANS AND SURGEONS.

Blood stains, see HOMICIDE, 6.

Medical assistance, see WORDS AND PHRASES, 38.

Prescription for throat trouble, see INTOXICATING LIQUORS, 14.

1. "Man, fearfully and wonderfully made, is the workmanship of his all-perfect Creator." *Chisholm v. Georgia*, 2 Dall. (U. S.) 419, *per* Wilson, J.

2. "Men were not made with windows in their breasts through which we might read the motives of their conduct." *U. S. v. Foster*, 6 Fed. Rep. 247, *per Hughes*, J.

3. Eating dinner is a matter of necessity. *Cleveland, etc., R. Co. v. Martin*, 13 Ind. App. 485, 41 N. E. Rep. 1051, *per Davis*, J.

4. "Hunger, thirst, and sleep are imperative." *Pennsylvania Co. v. McCaffrey*, 139 Ind. 430, 38 N. E. Rep. 67, *per Dailey*, J.

5. "'Man does not live by bread alone,'" and "if people would eat less and laugh more.....their moral as well as physical well-being would be materially improved." *Christy v. Murphy* (Supreme Ct. Spec. T.), 12 How. Pr. (N. Y.) 77, *per Clerke*, J.

How babies are made.

6. It is not true that God makes babies and throws them down to the doctors. *State v. Michael*, 37 W. Va. 565, 16 S. E. Rep. 803, *per Dent*, J.

Missionary's stomach and back.

7. A missionary is a human being. He has a stomach to be fed and a back to be clothed. *Nicholson v. Daniel*, 152 Pa. St. 461, 25 Atl. Rep. 1022, *per Paxson*, C. J.

Differences between married and unmarried men.

8. "There are no personal or physical characteristics known to social science whereby an unmarried

man may be distinguished from one that is married." *State v. Renick*, 33 Oregon 584, 56 Pac. Rep. 275, 44 L. R. A. 266, *per* Wolverton, C. J.

Height of man.

9. "The court may take judicial notice of the fact that a man could not strike his head against an obstruction four feet and seven inches above the place on which he was sitting." *Hunter v. New York, etc., R. Co.*, 116 N. Y. 615, 23 N. E. Rep. 9, *per* Brown, J.

Injury to fibula bone.

10. "Death from pneumonia is not ordinarily the necessary and natural result of an injury to the fibula bone." *Seifter v. Brooklyn Heights R. Co.*, 169 N. Y. 254, 62 N. E. Rep. 349, *per* Parker, C. J.

The brain.

11. "The brain is a pulpy mass." *Jamison v. Jamison*, 3 Houst. (Del.) 108, *per* Gilpin, C. J.

12. "The laws of thought are not suspended when the inquiry arises in a court of justice." *Standard Elevator Co. v. Crane Elevator Co.* (C. C. A.), 76 Fed. Rep. 767, *per* Showalter, J.

13. One can by training cultivate the faculty of memory to a very great extent, but not sufficiently to carry all the matters relating to a large business in his head. *Hamilton v. Hamilton*, 15 N. Y. App. Div. 47, 44 N. Y. Supp. 97.

Pregnancy.

14. Evidence that a woman is two or three months

in a state of pregnancy "indicates that some one has had carnal intercourse with her." *Fredericson v. State* (Tex. Crim. 1902), 70 S. W. Rep. 754, *per* Henderson, J.

15. Where a woman is in the family way a physician can prescribe for her without knowing who is the father of the child. *People v. Cole*, 113 Mich. 83, 71 N. W. Rep. 455.

Tokens of virginity.

16. The court, applying the Mosaic law, will take judicial notice of the fact that a girl eleven years old, if a maid, has "the tokens of virginity," and that if she has not such tokens she is not a maid. *Monroe v. State*, 71 Miss. 196, 13 So. Rep. 884.

17. The court will take judicial notice of the fact that ordinarily sexual intercourse with a virgin causes laceration. *Barnes v. State*, 37 Tex. Crim. 320, 39 S. W. Rep. 684.

Paternity.

18. "The physiological fact that a white man cannot be the father of a mulatto child by a white woman is, at the present day, as well settled as the opinion of scientific men can settle any question of that nature." *Florey v. Florey*, 24 Ala. 241, *per* Goldthwaite, J.

Survivorship.

19. Where two men are hanged at the same time, the fact that one shakes his legs after the other has become quiet is evidence of survivorship. *Broughton v. Randall*, Cro. Eliz. 502.

Sleep.

20. "The human body, considered as a machine, is the most perfect mechanism of which we have any knowledge. If properly cared for and treated, it will, in ordinary cases where there are no hereditary defects, retain its vitality and vigor to old age, but every movement of the body or action of the brain involves waste of the vital force, and this the Creator has provided shall, to a great extent, be replenished during sleep. Hence it is necessary to spend about one-third of our time in sleep." *State v. O'Rourke*, 35 Neb. 614, 53 N. W. Rep. 591, *per* Maxwell, C. J.

Diseases.

21. "Acute gastritis" is, it would seem, the same as "belly-ache." *Billings v. Metropolitan Life Ins. Co.*, 70 Vt. 477, 41 Atl. Rep. 516.

22. A venereal disease is individual property. *Gilbert v. Crystal Fountain Lodge*, 80 Ga. 284, 4 S. E. Rep. 905, 12 Am. St. Rep. 255, *per* Bleckley, C. J.

23. "That pneumonia is a disease is a notorious fact." *Kiernan v. Metropolitan L. Ins. Co. (C. Pl. Gen. T.)*, 13 Misc. (N. Y.) 39, 34 N. Y. Supp. 95, *per* Pryor, J.

24. Sunstroke is a disease and not an accident. *Sinclair v. Maritime Pass. Assur. Co.*, 3 El. & El. 478, 107 E. C. L. 478.

25. "Consumption of the lungs is a very weakening disease." *U. S. v. Frisbie*, 28 Fed. Rep. 808, *per* Billings, J.

26. "An invalid may be able to ramble among the mountains and fish a little for speckled trout, without being fit for business in the court-house." *Brumby v. Barnard*, 60 Ga. 292, *per* Bleckley, J.

Treatment of diseases.

27. "A cough or cold so far seated as to require medical treatment cannot be cured in a single night." *Kohler Mfg. Co. v. Beeshore*, 59 Fed. Rep. 572, *per* Shiras, J.

Mental Anguish.

See DAMAGES.

MINES AND MINING.

1. "Coal is a well-known mineral of great value." *Henry v. Lowe*, 73 Mo. 96, *per* Hough, J.

2. Mines and quarries are different. *Darvill v. Roper*, 3 Drew. 294.

MISCEGENATION.

"To 'join and unite' a street railway system with the commercial railway system suggests nothing but a miscegenation." *Stillwater, etc., R. Co. v. Boston, etc., R. Co.* (N. Y. App. Div.), 76 N. Y. Supp. 69, 72 N. Y. App. Div. 294, *per* Kellogg, J.

MONEY.

See also PROPERTY, 1.

1. "The court knows that money is a thing of value." *State v. Hyde*, 22 Wash. 551, 61 Pac. Rep. 719.

2. The expression "two dollars" necessarily implies money. *State v. Downs*, 148 Ind. 324, 47 N. E. Rep. 670.

3. The tickets of a transportation company are not tokens designed to circulate as money. *U. S. v. Monongahela Bridge Co.*, 26 Fed. Cas., No. 15,796.

4. Three thousand nine hundred dollars cannot be called "no funds." *Scovil v. Stage*, 5 Cinc. L. Bul. 351, 8 Ohio Dec. (Reprint) 54.

5. "13-100 of a dollar and 13 cents in legal contemplation mean the same thing." *Bates v. Ludlow, Wright* (Ohio) 582.

6. "Greenbacks" is but a slang word or nickname, and should not be used in an indictment describing the currency as denominated. *Wesley v. State*, 61 Ala. 282.

MONOPOLIES.

"There is no divine right to a monopoly." *Waterbury v. Merchants' Union Express Co.*, 50 Barb. (N. Y.) 157, *per* Barnard, J.

MORTGAGES.

See also CHATTEL MORTGAGES.

"A person cannot, all by himself, make a mortgage." *Walmsley v. Resweber*, 30 So. Rep. 5, *per* Provosty, J.

MOTHERS-IN-LAW AND THE LIKE.

1. A man has the right to keep his mother-in-law

out of his house. *Shaw v. Shaw*, 17 Conn. 189; *Maben v. Maben*, 72 Iowa 658, 34 N. W. Rep. 462.

2. "It is so very often that family quarrels arise from a man's bringing his wife to live with him in the same house with his mother and sisters that ordinarily no amount of pecuniary economy can compensate for the risk that is run." *Smith v. Smith*, 45 Pa. St. 403, *per* Lowrie, C. J.

3. A husband has the right to eject his brother-in-law, who is his wife's guest, from the house in which he and his wife live, even though the wife owns the house. *State v. Lockwood*, 1 Penn. (Del.) 76, 39 Atl. Rep. 589.

4. Where a mother-in-law is the owner of the premises she will, "of course, only give up her authority with her last breath. Nothing but death would or should be required to part her and the keys." *Shell v. Shell*, 2 Sneed (34 Tenn.) 716, *per* Caruthers, J.

5. A stepfather is not entitled to the same veneration and forbearance as a father. *Lattimer v. Elgin*, 4 Desaus. (S. Car.) 26.

Motions.

For new trial, see NEW TRIAL, 2.

Mules.

See ANIMALS, 37-42.

Multifariousness.

See PLEADING, 7.

MUNICIPAL CORPORATIONS.

City councilman, see OFFICE AND OFFICERS.

In general.

1. A village of twelve thousand inhabitants is not a "rural district." *Westchester County v. Dressner*, 23 N. Y. App. Div. 215.

Sinking fund.

2. "A sinking fund may, and frequently does, take unto itself the wings of the morning and fly away." *Wilkins v. Waynesboro*, 116 Ga. 359, 42 S. E. Rep. 767, *per* Little, J.

Fire department.

3. A good fire department is both necessary and useful to a city, and its efficiency is promoted by parades and practice. *Simon v. Atlanta*, 67 Ga. 618, 44 Am. Rep. 739.

Local improvements.

4. "It is a mistake to suppose that a citizen can present a balance sheet at the city treasury and get his losses cashed whenever the improvements in his neighborhood do not go forward as rapidly as they might, or in the best possible manner." *Tuggle v. Atlanta*, 57 Ga. 114, *per* Bleckley, J.

Ordinance against fast driving.

5. A provision in an ordinance that no person shall drive "any horse" faster than an ordinary traveling

gait is not applicable to the driver of a fire-engine, since the fire department is not intended as a purely ornamental adjunct, proficient only on parade. *Kansas City v. McDonald*, 60 Kan. 481, 57 Pac. Rep. 123.

Murder.

See HOMICIDE.

MUSIC.

In churches, see THEOLOGICAL JURISPRUDENCE, 14.

“The man that hath no music in himself,
Nor is not moved with concord of sweet sounds,
Is fit for treasons, stratagems, and spoils.”

Quoted by Montgomery, J., in Markham v. Southern Conservatory of Music, 130 N. Car. 276, 41 S. E. Rep. 531.

NAMES.

Judicial notice as to pronunciation of, see EVIDENCE, 35.

Nicknames, see INDICTMENTS, 1.

As evidence of insanity, see INSANE PERSONS, 7.

Of corporations, see CORPORATIONS, 8.

In general.

1. “Mere names are of but little importance.” *Waterbury v. Merchants' Union Exp. Co.*, 50 Barb. (N. Y.) 157.

2. “It is just as easy to call things by their right names as by wrong names.” *Fay v. Parker*, 53 N. H. 342, 16 Am. Rep. 270, *per Foster, J.*

3. A disreputable person or a criminal may select an exemplary name for his child, his horse, his dog, or his monkey. *Atkinson v. Doherty*, 121 Mich. 372, 80 N. W. Rep. 285.

4. The court will take judicial notice of "the change continually going on in the mode of spelling names—the different pronunciation of the same name, according to the circumstances and condition in life of the owner." *Chapman v. State*, 18 Ga. 736, *per Lumpkin, J.*

Smith.

5. "The surname 'Smith' does not identify an individual in a New England town." *Lever Bros., etc., Works v. Smith*, 112 Fed. Rep. 998, *per Townsend, J.*

Idem sonans.

6. "The name Farrell, as pronounced by an illiterate Irishman, would be very nearly, if not quite, *idem sonans* with Fardell." *Dolan v. Mutual Reserve Fund L. Assoc.*, 173 Mass. 197, 53 N. E. Rep. 398.

Synonyms.

7. "The court cannot take judicial cognizance of the fact—if it be a fact—that 'Gun Wa' is the Chinese synonym for 'Smith.'" *U. S. v. Smith*, 45 Fed. Rep. 476, *per Jenkins, J.*

Natural Gas.

See **PHYSICS**,

NAVIGABLE WATERS.

See also LAKES, 2 ; WATERS AND WATERCOURSES.

“Bathing in the sea, if done with decency, is not only lawful, but proper, and often necessary for many of the inhabitants of this country Decency must prevent all females, and infirmity many men, from bathing, except from a machine.” *Blundell v. Catterall*, 5 B. & Ald. 268, *per Best*, J.

Necessaries.

Liability of husband for wife's, see HUSBAND AND WIFE, 21-24.

Of infants, see INFANTS, 3, 5.

Works of necessity, see SUNDAY, 10-13.

NE EXEAT.

“No go” may be a substantial translation of the words *ne exeat*, but in pleading such an eccentric innovation as “a certain writ of no go” will not be sanctioned. *Ammerman v. Crosby*, 26 Ind. 451.

NEGLIGENCE.

See also CONTRIBUTORY NEGLIGENCE.

In general.

1. “The majority of men are not wary.” *Acer v. Westcott*, 46 N. Y. 384, 7 Am. Rep. 355, *per Peckham*, J.

2. “Pure accidents have not yet been eliminated from the facts of human experience.” *Conley v.*

American Express Co., 87 Me. 352, 32 Atl. Rep. 965, *per* Whitehouse, J.

3. "There can be no middle ground between wilfulness and negligence." Cleveland, *etc.*, R. Co. *v.* Miller, 149 Ind. 490, 49 N. E. Rep. 445.

4. "Care which is sufficient for a barrel of potatoes is negligence with a barrel of gunpowder." Turton *v.* Powelton Electric Co., 185 Pa. St. 406, 39 Atl. Rep. 1053, *per* Sterrett, C. J.

Evidence.

5. A verdict against a railroad company for negligence which is not supported by the evidence will not be upheld upon the theory that the jury read carelessness in the face of a brakeman, who testified as a witness, as "the law does not recognize physiognomy as an art or science sufficiently reliable to find a verdict upon—not even against a railroad corporation." Corson *v.* Maine Cent. R. Co., 76 Me. 244, 17 Am. & Eng. R. Cas. 634.

Negotiable Instruments.

Evidence in action on, see EVIDENCE, 9.

NEGROES.

See also ANTHROPOLOGY, 4.

As nuisances, see NUISANCES, 2.

Credibility of, see WITNESSES, 14.

Judicial notice as to, see EVIDENCE, 39, 40.

Negro preacher, see CLERGYMEN, 1.

Presumptions as to, see EVIDENCE, 42.

Are persons.

1. A negro is a "person" within the meaning of a statute. *Bowen v. State*, 9 Baxt. (68 Tenn.) 45, 40 Am. Rep. 71.

Evidence that person is mulatto.

2. Evidence that a person has "kinky hair and yellow skin" tends to prove that he is a mulatto. *Thurman v. State*, 18 Ala. 276.

Proof of good character.

3. "Although African blood is given the preference over white, to the exclusion of the Indian, Mongolian, and Filipino, under the naturalization laws of the United States the mere fact that the plaintiff is of African descent, and as a citizen of the United States, under the naturalization laws aforesaid, enjoys a distinction over his white neighbor, does not make it necessary for him to prove his good character before it is assailed." *Claiborne v. Chesapeake, etc., R. Co.*, 46 W. Va. 363, 33 S. E. Rep. 262, *per* Dent, J.

NEWSPAPERS.

See also COPYRIGHT, 1.

Business of publisher.

1. Publishing a newspaper is not a manufacturing industry. *Evening Journal Assoc. v. State Board of Assessors*, 47 N. J. L. 36, 54 Am. Rep. 114.

Fraud of publisher.

2. A newspaper the publisher of which changes figures to words so as to lengthen a notice and increase the cost of publication is not a reputable newspaper. *In re Steele*, 3 Land Dec. 115.

Judicial Knowledge as to newspapers.

3. The Supreme Court of Tennessee "cannot judicially know there is anything obscure in any Knoxville paper unless it be in the reports of Supreme Court opinions, and these appear to be obscure only to the lawyers who lose their cases." *Mincey v. Bradburn*, 103 Tenn. 407, 56 S. W. Rep. 273, *per Wilkes, J.*

NEW TRIAL.**In general.**

1. "A good case will not be apt to miscarry on a second venture." *Delane v. Central R., etc., Co.*, 59 Ga. 633, *per Bleckley, J.*

2. "A motion for a new trial does not prove its own recitals." *State v. Ashcraft* (Mo. 1902), 70 S. W. Rep. 898, *per Sherwood, J.*

3. "The financial condition of the parties ought not to influence the court in passing upon a motion for a new trial. The facilities with which one of the parties can appeal ought not to be considered as a reason." *Galveston v. Hemmis*, 72 Tex. 558, 11 S. W. Rep. 29, 13 Am. St. Rep. 828.

4. It is not ground for a new trial that a witness for

the movant swore one way and talked another after the trial. *Lasseter v. Simpson*, 78 Ga. 61, 3 S. E. Rep. 243.

5. Where the jurors after retiring to consider of their verdict attempted to sing and one of them was unable to carry the "base," it is not ground for a new trial that a man who was not a member of the jury joined them and gave them "the proper air." *Collier v. State*, 20 Ark. 37.

Absence of counsel.

6. A new trial will not be granted because the case was called sooner than was expected and counsel was absent, as in the business of a court "it is always probable that something improbable will happen." *Warren v. Purtell*, 63 Ga. 428, *per* Bleckley, J.

Where judge fell asleep.

7. It is not ground for a new trial that the court appeared to be asleep during the reading of the written evidence. A party who has "reason to suppose that the judge was indulging in a gentle doze after dinner should have suspended his reading or awakened the judge." *Musselman v. Musselman*, 44 Ind. 106, *per* Buskirk, J.

Smoking by attorneys in open court.

8. It is not ground for a new trial that attorneys were permitted to smoke in open court and during the trial, it not appearing that any objection was made to

the smoking, or that it had any injurious effect upon the party asking for the new trial. *Musselman v. Musselman*, 44 Ind. 106.

Where juror bet on both sides.

9. The fact that one of the jurors bet a pint of wine that the plaintiff would win and a gallon of wine that the plaintiff would lose is no ground for granting a new trial. *M'Causland v. M'Causland*, 1 Yeates (Pa.) 371.

Where jurors ate fruit.

10. A juror who has "eaten a pear and drank a draught of ale, wherefore he would not agree" is guilty of a misdemeanor, but a verdict subsequently rendered will not be set aside. *Anonymous*, 2 Dyer 218a.

11. Where the jurors carry figs and pippins with them in their pockets to the jury room they are liable to be fined, but the verdict will not be disturbed; and a heavier fine will be assessed against jurors who ate figs than against those who merely had pippins in their pockets. *Mounson v. West*, 1 Leon. 132.

Where jury drank water.

12. The verdict will not be set aside because the jurors, after agreeing but before rendering the verdict, saw a cup and drank out of it while the chief justice was going to see an affray, but the jurors will be fined. *Anonymous*, 1 Dyer 37b.

Where jury drank intoxicating liquor.

13. It is not ground for a new trial that jurors

drank whiskey "in little swallows." *People v. Leary*, 105 Cal. 486, 39 Pac. Rep. 24.

14. Where the bowels of jurors are affected by tainted beef, the administration of a pint and a half of whiskey made into the beverage known as "cocktail" is not necessarily a ground for a new trial. *Russell v. State*, 53 Miss. 367.

15. It is a ground for a new trial that the jury in a murder case upon retiring went to a hotel, got drunk, and in going up to their room in the hotel sang "We are climbing up the golden stairs." *State v. Demarest*, 41 La. Ann. 413, 6 So. Rep. 654.

Taking jury to church.

16. It is not a ground for a new trial that the jury in a murder case were taken to church and allowed to hear a sermon on the subject of Doubting Thomas. *State v. Kent*, 5 N. Dak. 516, 67 N. W. Rep. 1052.

17. It is a ground for a new trial that on a prosecution for murder the jury were taken to church and allowed to hear "shouting" and "prayers for the court and its officers;" there being in effect no difference between taking a jury to a preacher and taking a preacher to a jury. *Shaw v. State*, 83 Ga. 92, 9 S. E. Rep. 768.

Verdict against evidence.

18. In an action on a note the plaintiff testified as to its execution. Eight other witnesses, including two lawyers and the county clerk, all of whom were famil-

iar with the defendant's handwriting, pronounced the signature to the note genuine. Two other witnesses testified that the defendant had told them that the signature looked like his, but that if he had signed the note he had forgotten it. The defendant testified that he had never signed the note—and that he was a member of the Methodist church. *Held*, that a verdict for the defendant should be set aside as against the weight of the evidence. *Patrick v. Carr*, 50 Miss. 199.

NONSUIT.

See also DISMISSAL.

“Nonsuit is a process of legal mechanics ; the case is chopped off. Only in a clear, gross case is this mechanical treatment proper. Where there is any doubt another method is to be used—a method involving a sort of mental chemistry ; and the chemists of the law are the jury. They are supposed to be able to examine every molecule of the evidence, and to feel every shock and tremor of its probative force.” *Vickers v. Atlanta, etc., R. Co.*, 64 Ga. 306, *per* Bleckley, J.

NOTICE.

In ticket office, see CARRIERS, 4.

Obituary notice, see BURIAL, 7.

To produce papers, see DISCOVERY.

“You shall condemn no man unheard.” *Quoted by* Nisbet, J., in *Dearing v. Charleston Bank*, 5 Ga. 497, 48 Am. Dec. 300.

“Doth our law judge any man before it hear him?”
Quoted by Williams, J., in Miller's Estate, 159 Pa. St. 562, 28 Atl. Rep. 441.

NUISANCES.

See also ANIMALS, 42 ; GAMING ; INJUNCTIONS, 3, 5 ; SCHOOLS AND COLLEGES, 1.

Constitutionality of abatement of, see CONSTITUTIONAL LAW, 12.

In general.

1. “The courts cannot abate a man as a nuisance because some one gives him, or he gives himself, a title.” *State v. McKnight, 131 N. Car. 717, 42 S. E. Rep. 580, per Clark, J.*

2. “A negro family is not, *per se*, a nuisance.” *Falloon v. Schilling, 29 Kan. 292, 44 Am. Rep. 642, per Brewer, J.*

3. “One may cook his dinner in such manner and under such conditions as to render the operation extremely dangerous, and constitute it a nuisance.” *The Stockton Laundry Case, 26 Fed. Rep. 611, per Sawyer, J.*

Practicing law.

4. “There is nothing about the practice of the profession of the law which makes the business dangerous to the public. It does not threaten the public health or safety, nor is it demoralizing to the public.” *Sonora v. Curtin, 137 Cal. 583, 70 Pac. Rep. 674, per Cooper, C.*

Offensive odors.

5. The wanton and needless cooking of cabbage and sauerkraut for the purpose of annoying a neighbor is a nuisance. *Medford v. Levy*, 31 W. Va. 649, 8 S. E. Rep. 302, 13 Am. St. Rep. 887.

6. If a person collects the carcasses of dead animals in large numbers in hot weather, and in a populous neighborhood, he is presumed to intend to commit a nuisance. *Seacord v. People*, 22 Ill. App. 279.

Noise.

7. The use of steam whistles on factories is not at all necessary. *Knight v. Goodyear's India Rubber Glove Mfg. Co.*, 38 Conn. 438, 9 Am. Rep. 406.

8. "We know of no sound, however discordant, that may not by habit be converted into a lullaby, except the braying of an ass or the tongue of a scold." *Mygatt v. Goetchins*, 20 Ga. 350, *per Lumpkin, J.*

9. "Lullabies are not usually desirable after one is wrapped in slumber, and might become an intolerable nuisance at four and five o'clock in the morning." *Hill v. McBurney Oil, etc., Co.*, 112 Ga. 788, 38 S. E. Rep. 42, *per Simmons, C. J.*

10. "The many sweet emotions awakened when the air is resonant with the silvery tones of bells must give way to the right to rest in peace and quiet at one's home." *State v. King*, 105 La. Ann. 731, 30 So. Rep. 101, *per Breaux, J.*

OBITER DICTA.

1. Courts may refrain from *obiter dicta*, because "sufficient unto the day is the evil thereof." *Waters v. Perkins*, 65 Ga. 32, *per Jackson, J.*

2. "A passing cloud ought not to hide the sun, when by rejecting the shadow we learn at last what is the substance." *Doll v. Schoenberg*, 2 Disney (Ohio) 54, *per Storer, J.*

Obscenity.

See INDECENCY; WORDS AND PHRASES, 5.

Offensive Language.

See ABUSIVE AND OFFENSIVE LANGUAGE.

OFFICE AND OFFICERS.

See also SHERIFFS.

In general.

1. "A public office is not to be treated as a 'private snap.'" *Board of Com'rs v. Dickey* (Minn. 1902), 90 N. W. Rep. 775, *per Lovely, J.*

Right to run for office.

2. "The privilege of seeking and holding office is one which is very near and dear to the hearts of a large majority of the people. Most believe themselves qualified for, and many consider themselves absolutely entitled to office." *State v. Southwick*, 13 Wis. 365, *per Dixon, C. J.*

Qualification to hold office.

3. The lieutenant of a gang of workmen in the navy-yard is disqualified to serve as an election officer. *Matter of Certain Election Officers*, 2 Brews. (Pa.) 133.

Who is an officer.

4. The overseer of the heating apparatus in the basement of a county court-house is not an "officer." *Thomas v. Supervisors of Cook County*, 56 Ill. 351.

Policemen.

5. "A policeman is only a citizen dressed in blue clothes and brass buttons." *People v. Glennon* (Supm. Ct. Spec. T.), 74 N. Y. Supp. 794, *per* Gaylor, J.

Lucrative offices.

6. The office of prison director is a lucrative office. *Howard v. Shoemaker*, 35 Ind. 111.

7. "The office of councilman in a city is a lucrative office." *State v. Kirk*, 44 Ind. 401, 15 Am. Rep. 239, *per* Downey, C. J.

Salary of U. S. senator.

8. The salary of a member of the United States Senate is not an ordinary expenditure. *Salary of Senator Broderick*, 9 Op. Atty. Gen. 446.

Misconduct of officer.

9. "If frequenting a house of ill fame for the purpose of drinking and sleeping with the unfortunate inmates,

more sinned against than sinning, by a prosecuting attorney of a county, whose duty it is to prosecute the keeper of such house and the inmates and patrons thereof, is not gross immorality, then such a thing is not known to the law." *Moore v. Strickling*, 46 W. Va. 515, 33 S. E. Rep. 274, *per Dent*, P.

Ordinances.

See MUNICIPAL CORPORATIONS, 5.

Outlawry.

See APPEAL AND ERROR, 15.

Oysters.

See FISH, 2-4.

Pardons.

See COMMUTATION.

PARENT AND CHILD.

See also ADOPTION ; BASTARDY.

Orphans, see INFANTS, 6.

Right to select any name for child, see NAMES, 3.

Stepfather, see MOTHERS-IN-LAW AND THE LIKE, 5.

"Children obey your parents in the Lord, for this is right." *Quoted* by Appleton, J., in *Scott v. Watson*, 46 Me. 362, 74 Am. Dec. 457.

"Give not thy son power over thee whilst thou livest; for it is better that thy children should look to thee than that thou shouldst look to their hands. When thou shalt end thy days and finish thy life,

distribute thine inheritance." *Quoted* by Lowrie, J., in *Roland v. Schrack*, 29 Pa. St. 125.

"Foolishness is bound up in the heart of a child, but the rod of correction shall drive it far from him."

"The rod and reproof give wisdom, but a child left to himself causeth shame to his mother."

"Train up a child in the way he should go, and when he is old he will not depart from it."

Quoted by Somerville, J., in *Boyd v. State*, 88 Ala. 169, 7 So. Rep. 268, 16 Am. St. Rep. 31.

In general.

1. A parent's love is "priceless." *West Chicago St. R. Co. v. Mabie*, 77 Ill. App. 176, *per* Morton, J.

2. A father is not bound to work his children for the benefit of his creditors. *Beaver v. Bare*, 104 Pa. St. 58, 49 Am. Rep. 567.

3. "A child's teeth shall not be set on edge because its father has eaten sour grapes." *State v. Anderson*, 19 Mo. 241, *per* Scott, J.

4. "In an unlighted borough, on a dark, rainy, stormy night, a very prudent mother will probably stay indoors with her children." *Musselman v. Hatfield*, 202 Pa. St. 489, 52 Atl. Rep. 15, *per* Dean, J.

5. In a statute referring to "any unmarried person not having a child" the word "child" means

only a legitimate child. *Overseers of Poor v. Overseers of Poor*, 176 Pa. St. 116, 34 Atl. Rep. 351.

6. The mother of an only son is not the most suitable person to be charged with his moral discipline and mental training. *In re Van Houten*, 3 N. J. Eq. 220, 29 Am. Dec. 707, *per* Chancellor Vroom.

Duty of parent to child.

7. "A father has no right to raise hopes in the breast of a son, and thus secure his services for almost a score of years after his majority—the very cream of his manhood—and then cast him off without recompense because he (the father) has taken unto himself a new wife, with the expectancy of new heirs. While children should reverence their parents, parents should deal justly with their children." *Spurgin v. Spurgin*, 47 W. Va. 38, 34 S. E. Rep. 750, *per* Dent, J.

Chastisement of child.

8. A saw is a cruel and unlawful thing with which to chastise a child. *Neal v. State*, 54 Ga. 281.

Power of court of bankruptcy over parent.

9. A court of bankruptcy "has no power over the mere moral and natural duties of a father, and has no power to enforce them, as such; nor must it be influenced by pathetic fringes that may be put upon the argument respecting those duties." *In re Houston*, 94 Fed. Rep. 119, *per* Evans, J.

Parliamentary Rules.

See JURY, 17.

PARTIES.

See also INTERVENTION.

Husband and wife as, see HUSBAND AND WIFE, 5.

On appeal, see APPEAL AND ERROR, 3.

To suit in equity, see EQUITY, 1.

1. "All the defendants to a suit constitute but one party." *Bibb v. Reid*, 3 Ala. 88, *per* Ormond, J.

2. "The rights of a party cannot be determined on conclusively unless he be a party." *Koogler v. Huffman*, 1 McCord L. (S. Car.) 495, *per* Colcock, J.

PARTITION.

1. "Men may divide the moon by imaginary lines, but equity will not enforce their contract." *Hall v. Vernon*, 47 W. Va. 295, 34 S. E. Rep. 764, *per* Dent, P. J.

2. It is impossible to divide an annual rent of six cents between seventy-five persons. *Brendel v. Klopp*, 69 Md. 1, 13 Atl. Rep. 589.

PARTNERSHIP.**Law partnerships.**

1. "The main object of forming law partnerships" is "the avowed purpose of reaping a goodly harvest of fees." *Davis v. Dodson*, 95 Ga. 718, 22 S. E. Rep. 645, 51 Am. St. Rep. 108, *per* Lumpkin, J.

Quarrels of partners.

2. "Nothing is of more frequent occurrence than the quarrels of partners." *Featherstone v. Cooke*, L. R. 16 Eq. 298, *per* Sir R. Malins, V. C.

PATENT MEDICINES.

The business of selling patent medicines depends not so much upon the merits of the medicine as upon advertising. *Fowle v. Park*, 48 Fed. Rep. 789.

PATENTS FOR INVENTIONS.**In general.**

1. "It is much easier to make a machine that will not work than one that will." *Rynear Co. v. Evans*, 83 Fed. Rep. 696, *per* Coxe, J.

2. "Patents are not granted for ingenuity in the discovery of words." *Schlicht Heat, etc., Co. v. Æolipyle Co.*, 117 Fed. Rep. 299, *per* Coxe, J.

3. "Sir Isaac Newton's discovery of the principle of gravitation could not be the subject of a patent." *Wintermute v. Redington*, 30 Fed. Cas. No. 17,896, *per* Willson, J.

Invention.

4. A shadow of a shade of an idea is not patentable. *Atlantic Works v. Brady*, 107 U. S. 192, 2 Sup. Ct. Rep. 225.

5. Placing a lock on a prison door is not a patentable invention. *Fond du Lac County v. May*, 137 U.

S. 395, 11 Sup. Ct. Rep. 98, *reversing* 27 Fed. Rep. 691.

6. "Brains" are "necessary, not hands only, to connect a car-coupling tool or a toothbrush with an opera glass." *Mack v. Spencer Optical Mfg. Co.*, 52 Fed. Rep. 819, *per* Coxe, J.

7. In determining whether or not a patented device for anglers discloses invention, the court will consider the fact that it will tend to prevent indulgence in expressions not altogether in harmony with the precepts of the decalogue. *Bray v. United States Net, etc., Co.*, 70 Fed. Rep. 1006, *per* Coxe, J.

Prior use.

8. An inventor cannot patent a corset-steel which he has previously presented to his fiancée. *Egbert v. Lippman*, 104 U. S. 333.

Expert testimony.

9. In patent cases "when an expert undertakes to prove that his adversary's process or machine is a failure he always scores a success." *Ryneer Co. v. Evans*, 83 Fed. Rep. 696, *per* Coxe, J.

Paternity.

See MEDICAL JURISPRUDENCE, 19.

Payment.

Leaving hat in barroom in payment for drinks, see EVIDENCE, 44.

Peddlers.

See **HAWKERS AND PEDDLERS.**

Pedigree.

Of calves, see **ANIMALS**, 19.

Of dogs, see **ANIMALS**, 32.

Penitentiaries.

See **PRISONS.**

PERJURY.

Swearing off taxes, see **TAXATION**, 3.

The rectitude of the man commended in Scripture who "swareth to his own hurt" is rarely exhibited. *Phillips v. Ocmulgee Mills*, 55 Ga. 633.

PERSONAL INJURIES.

See also **DAMAGES**; **MASTER AND SERVANT**, 5-7; **RAILROAD COMPANIES**, 8.

"The scars received sometimes in the wars of Venus are as plain to sight as a leg broken in a railroad accident." *Jones v. Brooklyn, etc., R. Co.*, 3 N. Y. Supp. 253, *per* Van Wyck, J.

Petition.

See **PLEADING**, 14-17.

PHOTOGRAPHS.

See also **INDECENCY**, 3.

"Old Sol" is a witness who cannot be subpoenaed

although his deposition may be taken in a photograph. "It is a very comforting thought and pleasing reflection, that amid all the vicissitudes and pressing exigencies of railroad damage suits, they have never yet attempted to impeach 'Old Sol;' perhaps they were deterred by his shining reputation. At any rate, from his serene seat in the heavens,

' From his cairn on high,'

he still looks down upon the pigmy populations of earth with the same burning eye wherewithal erstwhile he gazed down upon Ananias, that time he went in before the apostles, and 'lied to the Holy Ghost.' " Kreis v. Missouri Pac. R. Co., 148 Mo. 321, 49 S. W. Rep. 877, *per* Sherwood, J.

PHYSICIANS AND SURGEONS.

See also DENTISTS; MEDICAL JURISPRUDENCE.

Doctors of doubt, see JURY, 3.

Libel of, see LIBEL AND SLANDER, 3.

Practice of medicine by corporations, see CORPORATIONS, 4.

Prescription for throat trouble, see INTOXICATING LIQUORS, 14.

Practice of medicine.

1. "A dead man is not a patient." Harrison v. Sutter St. R. Co., 116 Cal. 156, 47 Pac. Rep. 1019, *per* Van Fleet, J.

2. "The teaching of Christian Science.....does

not constitute the practice of medicine." *State v. Mylod*, 20 R. I. 632, 40 Atl. Rep. 753.

3. "Prayer for those suffering from disease, or words of encouragement, or the teaching that disease will disappear and physical perfection be attained as a result of prayer, or that humanity will be brought into harmony with God by right thinking and a fixed determination to look on the bright side of life, does not constitute the practice of medicine." *State v. Mylod*, 20 R. I. 632, 40 Atl. Rep. 753, *per* Bosworth, J.

Malpractice.

4. In an action for malpractice it is competent to show that the defendant was engaged in farming pursuits while he was practising his profession. *Mayo v. Wright*, 63 Mich. 32, 29 N. W. Rep. 832.

5. Evidence that a surgeon is extensively engaged in farming and that he devotes a considerable share of his time to the management of several farms is admissible as affecting his professional knowledge and skill. *Hess v. Lowrey*, 122 Ind. 225, 23 N. E. Rep. 156, 17 Am. St. Rep. 355.

6. "If, according to the prescription of the physician in the Arabian Nights, a physician should beat his patient with a mallet for the *bona fide* purpose of restoring his health, though this might be malpractice it would be no battery." *State v. Beck*, 1 Hill L. (S. Car.) 363, 26 Am. Dec. 190, *per* Harper, J.

Compensation of physicians.

7. The claim of a physician for services is not one for labor. *Weymouth v. Sanborn*, 43 N. H. 171, 80 Am. Dec. 144.

8. "The law puts no such pressure upon a doctor as to require him absolutely to charge for every visit. It allows him the gratification of a free and friendly call upon his patient, even when he has a right to put it in his bill." *Buchanan v. Sterling*, 63 Ga. 227, *per* Bleckley, J.

Revocation of license.

9. In proceedings to revoke the defendant's license to practice medicine and surgery the complaint is insufficient where it is merely "a fascicle of hints, inferences, innuendoes, and gossip, with the wraith of an abortion hovering over all." *State v. Kellogg*, 14 Mont. 426, 36 Pac. Rep. 957, *per* De Witt, J.

PHYSICS.

1. "Natural gas is not heat." *Emerson v. Com.*, 108 Pa. St. 111.

2. "The trajectory of every shot is governed by three opposing forces—momentum, friction, and gravitation—the speed with which it leaves the gun, the resistance of the atmosphere, and the attraction of the earth." *Chappell v. Ellis*, 123 N. Car. 259, 31 S. E. Rep. 709, 68 Am. St. Rep. 822, *per* Douglas, J.

Plea.

See PLEADING, 19-24.

PLEADING.

See also INDICTMENTS ; INJUNCTIONS, 5 ; NE EXEAT ; PARTIES.

Averment of fraud, see FRAUD, 5.

In ejectment, see EJECTMENT.

Equity, see EQUITY, 5.

“In law, no plea so tainted or corrupt,
But, being seasoned with a gracious voice,
Obscures the show of evil.”

Quoted by Breese, J., in *Jumpertz v. People*, 21 Ill. 375.

In general.

1. “Truth is the goodness and virtue of pleading, as certainty is the grace and beauty of it.” *Quoted* by Mayes, J., in *Thigpen v. Mississippi Cent. R. Co.*, 32 Miss. 347.

2. A pleading must “march up to the requirements of the law.” *Silver Peak Gold Min. Co. v. Harris*, 116 Fed. Rep. 439, *per* Hawley, J.

3. “Prurient novelties in pleading” are a sort that the court cannot approve. *Bullard v. Harrison*, 4 M. & S. 387, *per* Lord Ellenborough, C. J.

4. The rules of pleading are not affected by erroneous headnotes written by reporters. *Haughie v.*

New York, etc., Tel. Co., 34 Misc. (N. Y.) 634, 70 N. Y. Supp. 584.

5. Bad grammar will not vitiate a pleading. Composition which in school would not pass may be tolerated in the court-house. *Dickson v. State*, 62 Ga. 583, *per* Bleckley, J.

6. "It is a little difficult to hold a proposition of fact in favor of a party who, in his pleading, expressly negatives the existence of such fact." *Body v. Jewsen*, 33 Wis. 402.

7. "It is as true in pleading as in mathematics that nothing added to nothing makes nothing, and that the whole cannot be greater than the sum of all its parts." *Hill v. Fairhaven, etc., R. Co.* (Conn. 1902), 52 Atl. Rep. 725, *per* Prentice, J.

Multifariousness.

8. Where a bill is objected to as multifarious the court will not exact a unity greater than that required by sticklers for the dramatic unities. *Clary v. Haines*, 61 Ga. 520.

Surplusage.

9. "There is no more need that the State of Louisiana should make vain repetitions in her pleadings than there is that her Christians should make them in their prayers." *State v. Phelps*, 24 La. Ann. 493, *per* Howe, J.

Definiteness and certainty.

10. The court will not require greater accuracy than was ever conceived of by the special pleaders of the past. *Walko v. Walko*, 64 Conn. 74, 29 Atl. Rep. 243.

Alleging matters of evidence.

11. The fact that the capacity of a jack for procreation is the matter in controversy does not warrant an exception to the rule that a party need not plead his evidence. *Ash v. Beck* (Tex. Civ. App. 1902), 68 S. W. Rep. 53.

Averments as to time.

12. "Allegations fixing no time within which goods were sold except by the phrases 'a short while prior to' and 'several months before' are too indefinite and uncertain. They may mean hours, days, months, or years. They are no more definite than 'some time before,' or the expressions with which all good nursery tales open, of 'once upon a time,' 'in the good old days' and other classic phrases with which mothers, nurses, and others mystify and amuse the young mind. In *Æsop's Fables*, *Grimm's* and other fairy tales, 'Nights with Uncle Remus,' or, it may be, in equity proceedings when time is not of the essence of the contract, such expressions may be fit and proper," but not in bankruptcy proceedings. *In re Peacock*, 101 Fed. Rep. 560, *per Purnell, J.*

Description of horses.

13. If a description of “‘one pair of claybank horses’ was meant to include a ‘yellow pony with some white about him,’ it must be deemed a singularly inapt and unsatisfactory description.” *Golden v. Cockril*, 1 Kan. 259, 81 Am. Dec. 510.

Scandal and impertinence.

14. A display of heat and rancor in the pleadings will not be commended, for “it is always possible to carry on a lawsuit to its conclusion and in all of its steps and proceedings observe and exhibit the *suaviter in modo* which like a soft answer turneth away wrath, and equally with the *fortiter in re* protects a client's rights and interests.” *Smith v. Schlink*, 15 Colo. App. 325, 62 Pac. Rep. 1044, *per* Bissell, J.

Declaration, complaint or petition.

15. A declaration should not be drawn by an inexperienced office boy, but by a man of science. *Ralston v. Strong*, 1 D. Chip. (Vt.) 287, *per* Chipman, C. J.

16. A petition asking that a certain highway “be ———” is insufficient. *Lehmann v. Rinehart*, 90 Iowa 346, 57 N. W. Rep. 866.

17. A complaint is bad where it is such that the wisdom of Solomon accentuated by the legal lore of Coke and Mansfield could not devise a judgment which it would support. *Wilson v. Thompson* (Idaho 1896), 43 Pac. Rep. 557, *per* Huston, J.

Prayer.

18. The prayer for general relief is an "India-rubber prayer." *Rutherford v. Jones*, 14 Ga. 521, 60 Am. Dec. 655, *per Lumpkin, J.*

Demurrer.

19. An answer denying that an act of the legislature under which the plaintiff claims was constitutionally passed is but a demurrer. *Scott v. Clark County*, 34 Ark. 283.

Plea or answer.

20. A letter is not an answer. *Matter of Kimball*, 155 N. Y. 62, 49 N. E. Rep. 331.

21. It is fair to tell the plaintiff what the defense is. *Collins v. Blantern*, 2 Wils. C. Pl. 347, *per Wilmot, C. J.*

22. The term "answer" includes a reply as well as an answer. *Seaman v. McClosky*, 23 Misc. (N. Y.) 445, 53 N. Y. Supp. 554.

23. An answer which is "as a bowing wall or a tottering fence" should be stricken out. *Crowns v. Forest Land Co.*, 99 Wis. 103, 74 N. W. Rep. 546.

Inconsistent defenses.

24. "One of the prime objects of pleading is to apprise his adversary of the nature of the charge or defense of the pleader. It would be too much to insist on absolute fairness in this regard,

but certainly it is not unreasonable to refuse to listen to the excuses one attempts to make for committing an act which at the same time he solemnly denies he committed." *Mangold v. Oft*, 63 Neb. 397, 88 N. W. Rep. 507, *per* Albert, J.

Delay in filing answer.

25. The nonresident "general counsel" of a railroad company is its agent, and it is answerable for his neglect, and where such company's delay in filing an answer is due to his awaiting a copy of the complaint by mail before appointing a resident attorney to file the answer, the delay is inexcusable as the law does "not recognize this leisurely, kid-glove and diletante manner of attending to legal proceedings at long range." *Manning v. Roanoke, etc., R. Co.*, 122 N. Car. 824, 28 S. E. Rep. 963, *per* Clark, J.

Replication.

26. A bad replication is good enough for a bad answer. *Ellis v. Kenyon*, 25 Ind. 134.

Amendments.

27. "The rule of amendment is as broad as the doctrine of universal salvation." *Murphy v. Peabody*, 63 Ga. 522, *per* Bleckley, J.

28. Where the entire record is "terrible bad," and the pleadings are in "a confused and jumbled-up condition," the parties should have leave to amend. *Musselman v. Manly*, 42 Ind. 462.

29. "The most eminent professional skill on earth cannot raise the dead to life by a motion to amend." Goldsmith *v.* Georgia R. Co., 62 Ga. 542, *per* Bleckley, J.

30. Even after an appeal to the Superior Court a curative amendment is allowable, as "court physicians" treat chronic disorders as well as acute ones. Burrus *v.* Moore, 63 Ga. 405, *per* Bleckley, J.

31. It is not the rule that a pleading may take an emetic, but not more food; that curative treatment is restricted to depletion; or that all tonics are prohibited. Ellison *v.* Georgia R. Co., 87 Ga. 691, 13 S. E. Rep. 809, *per* Bleckley, C. J.

PLEDGES.

1. A pledge is not a mechanic's lien. Rosenzweig *v.* Frazer, 82 Ind. 342.

2. One person's knowledge that another person is not a pledgee will not make such other person a pledgee. Young *v.* Kimball, 59 N. H. 446, *per* Doe, C. J.

Poker.

See GAMING, 6-8.

Policemen.

See OFFICE AND OFFICERS, 5.

Meaning of word "copper," see WORDS AND PHRASES, 17.

Whether "henchman" means policeman, see WORDS AND PHRASES, 27.

Politicians.

See DIPLOMACY.

Polygamy.

See BIGAMY.

Pool.

See BILLIARDS AND POOL.

POOR PERSONS.**What constitutes poverty.**

1. One who is in receipt of a salary of twenty dollars per week, and is paying a rent of two hundred dollars per annum for the house which he occupies, is not a poor person. *Wickelman v. A. B. Dick Co.*, 85 Fed. Rep. 851.

2. "Among millionaires, a man worth only a hundred thousand dollars is poor indeed; while in some localities, a man worth five thousand dollars over and above all his liabilities would be considered a very wealthy citizen." *Branham v. State*, 96 Ga. 307, 22 S. E. Rep. 957, *per Lumpkin, J.*

Nature of poverty.

3. Poverty is not an "extraordinary circumstance." *Whalen v. Sheridan*, 10 Fed. Rep. 661, *per Choate, J.*

POST OFFICE.

Use of canceled stamps, see CUSTOMS DUTIES.

Withholding mail matter, see TROVER AND CONVERSION.

1. "Letters addressed to fictitious names are not

incapable of delivery." U. S. v. Duff, 19 Blatchf. (U. S.) 9, *per* Benedict, J.

2. "The great bulk of letters sent by mail reach their destination." Oregon Steamship Co. v. Otis, 100 N. Y. 446, 3 N. E. Rep. 485, 53 Am. Rep. 221, *per* Finch, J.

3. "Under our benignant system of governmentcorrespondence is nearly as cheap as talk." Charge to Grand Jury, Chase's Dec. 263, *per* Chase, C. J.

4. "Postage stamps while in the hands of the Government, ready to be sold and used, are most surely its personal property." Jolly v. United States, 170 U. S. 402, 18 Sup. Ct. Rep. 624, *per* Peckham, J.

Practice.

See ACTIONS, 11; APPEARANCE; ARGUMENT OF COUNSEL; ELECTION; DEFAULTS; DISMISSAL; INSTRUCTIONS; NEW TRIAL; NONSUIT; PARTIES; TRIAL; VERDICTS.

Prayer.

See PLEADING, 17.

Preachers.

See CLERGYMEN.

Presumptions.

See EVIDENCE, 41-47.

As to jurors, see JURY, 13-15.

Guilt from flight, see INSTRUCTIONS, 11.

Marriage, see MARRIAGE, 14, 15.

Principal and Accessory.

See CRIMINAL LAW, 12, 13.

PRINCIPAL AND AGENT.

See also MASTER AND SERVANT.

Commercial travelers, see HOMESTEAD AND EXEMPTIONS, 9.

1. "An agent to tell the truth may bind his principal by telling a lie." *Planters' Rice-Mill Co. v. Merchants' Nat. Bank*, 78 Ga. 574, 3 S. E. Rep. 327, *per* Bleckley, C. J.

2. "Drummers are, and have been for ages, a large and active class of commercial and business agents." *Thomas v. Hot Springs City*, 34 Ark. 553, 36 Am. Rep. 24, *per* English, C. J.

Priorities.

See CREDITOR'S BILLS.

Among deeds, see DEEDS, 6.

PRISONS.

As place of residence, see RESIDENCE.

Effect of sending Chinamen to, see CHINESE, 3.

"When the ponderous iron doors of the prison close on the convict it not only shuts him in, and shuts out the bright angel of liberty, but it also shuts out of the convict's heart all hope, which is the anchor of the soul." *Miller v. State*, 149 Ind. 607, 49 N. E. Rep. 894, *per* McCabe, J.

Privies.

See JUDGMENTS, 3.

Privileged Communications.

Testimony of wife against husband, see EVIDENCE, 15.

Privileges and Immunities.

See CONSTITUTIONAL LAW, 4-9.

Probate.

See EXECUTORS AND ADMINISTRATORS; WILLS.

Profanity.

See ABUSIVE AND OFFENSIVE LANGUAGE.

Prohibition, Writ of.

See JUSTICES OF THE PEACE, 5.

PROPERTY.

See also ADVERSE POSSESSION; DEEDS; ESTATES; LAKES.

Ownership of law, see LAW, 20, 21.

What constitutes.

1. "Money is certainly property." *Pirie v. Chicago Title, etc., Co.*, 182 U. S. 438, 21 Sup. Ct. Rep. 906, 5 Am. Bank. Rep. 814, *per McKenna, J.*

Real property.

2. Water is land. *Northern Pac. R. Co. v. Carland*, 5 Mont. 146, 3 Pac. Rep. 134.

Title.

3. It is one of the oldest rules of property known to the law that the title of the owner of the soil extends, not only downward to the center of the earth, but upward *usque ad cælum*, although it is perhaps doubtful whether a very quarrelsome owner will ever enjoy the usufruct of his property in the latter direction. *Hannabalsen v. Sessions* (Iowa 1902), 90 N. W. Rep. 93, *per* Weaver, J.

4. "As a general rule the title of property, like the flow of a stream, cannot rise higher than its source." *Moore v. Robinson*, 62 Ala. 537, *per* Stone, J.

5. A street railroad company does not own the snow that falls on its tracks. *Union R. Co. v. Cambridge*, 11 Allen (Mass.) 287, *per* Hoar, J.

Disclaimer.

6. "Riches are not to be forced on people—whether they will or not. Property is a burden as well as a benefit, and whoever is unwilling to bear the burden for the sake of the benefit is at liberty to decline both." *Daniel v. Frost*, 62 Ga. 697, *per* Bleckley, J.

PROPHECIES.

1. "It is probable that some future historian of the jurisprudence of this country will criticise severely the leniency with which the courts of to-day have looked upon stock-jobbing schemes for the issue of bonds for fictitious debts and stock not representing

property." *Drake v. New York, etc., Water Co.* (Supm. Ct. App. Div.), 55 N. Y. Sup. 225, *per* Cullen, J.

2. "Cars upon street railroads are now generally, if not universally, propelled by horses, but who can say how long it will be before it will be found safe and profitable to propel them with steam, or some other power besides horses?" *Moses v. Pittsburgh, etc., R. Co.*, 21 Ill. 516 (decided in 1859), *per* Caton, C. J.

Prostitution.

See DISORDERLY HOUSES AND PERSONS.

Proverbs.

See MAXIMS, PROVERBS AND ADAGES.

Province of Court and Jury.

See ANIMALS, 41; CONTRIBUTORY NEGLIGENCE, 4, 5; EVIDENCE, 47.

Public Policy.

See CONTRACTS, 5, 6.

QUARRELS.

See also ABUSIVE AND OFFENSIVE LANGUAGE.

Among women, see WOMEN, 17.

Between husband and wife, see HUSBAND AND WIFE, 35.

Of partners, see PARTNERSHIP, 2.

"A quarrel cannot be *ex parte*." *Carr v. Conyers*, 84 Ga. 287, 10 S. E. Rep. 630, 20 Am. St. Rep. 357, *per* Bleckley, C. J.

RAILROAD COMPANIES.

See also CARRIERS ; MISCEGENATION ; STREET RAILROADS.

Evidence as to speed of train, see EVIDENCE, 54.

Judicial notice as to prejudice against, see EVIDENCE, 38.

In general.

1. "Railways afford speedy and comfortable passage to and from divers parts of the country." *Stockton v. Central Railroad Co. of New Jersey*, 50 N. J. Eq. 52, 24 Atl. Rep. 964, *per* McGill, C.

2. "The authority to operate a railroad includes the right to make the noise incident to the movement and working of its engines." *Stanton v. Louisville, etc., R. Co.*, 91 Ala. 382, 8 So. Rep. 798, *per* Coleman, J.

3. "A railroad is neither a drain nor a levee in the common acceptation of the word." *Dano v. Mississippi, etc., R. Co.*, 27 Ark. 564, *per* McClure, C. J.

4. Passenger railway cars "are omnibuses, or if not, they are vehicles in the nature of omnibuses." *Frankford, etc., Pass. R. Co. v. Philadelphia*, 58 Pa. St. 119, 98 Am. Dec. 242, *per* Strong, J.

5. "A railway company is entitled to, and must receive, the same measure of justice that is meted out in a suit between John Doe and Richard Roe." *Illinois Cent. R. Co. v. Welch*, 52 Ill. 183, 4 Am. Rep. 593, *per* Lawrence, J.

What constitutes "train."

6. An engine with a car attached to it which is being moved onto a side track to be cleaned is a "train." *Shea v. New York, etc., R. Co.*, 173 Mass. 177, 53 N. E. Rep. 396.

Operating expenses.

7. "By the exercise of sufficient ingenuity in multiplying the items of expenses attending such a business as that of railroading, the actual earnings of a road may be made to vanish in a maze of mathematical calculation." *Schmidt v. Louisville, etc., R. Co.*, 95 Ky. 289, 25 S. W. Rep. 494, 26 S. W. Rep. 547, *per Hazelrigg, J.*

Personal injuries.

8. "A boy eleven years and nine months old, and weighing sixty-five pounds, standing at a distance of two or three feet of a passing freight train, could be sucked under such a train by the air put in motion by its passage, and the railroad company be liable for such suction." *Kreis v. Missouri Pac. R. Co.*, 148 Mo. 321, 49 S. W. Rep. 877, *per Sherwood, J., citing Graney v. St. Louis, etc., R. Co.*, 140 Mo. 89, 41 S. W. Rep. 246.

Dogs on railroad track.

9. Where a pack of dogs are on a railroad track it is not necessary to blow the whistle for each particular dog. *Fink v. Evans*, 95 Tenn. 413, 32 S. W. Rep. 307.

Elevated railroads.

10. An elevated railroad is not an electric-lighting plant. *Bly v. Edison Electric Illuminating Co.* (N. Y. 1902), 64 N. E. Rep. 745, *per* Haight, J.

RAPE.

See also **ANIMALS**, 10 ; **INSTRUCTIONS**, 12.

In general.

1. It is entirely possible for a man to insult a woman without committing or intending to commit the crime of rape. *People v. Page*, 162 N. Y. 272, 56 N. E. Rep. 750, *per* O'Brien, J.

Assault with intent to commit.

2. "In order for an assault with intent to rape to be committed, is it necessary that the persons of the two should be in such proximity as that the organs of the male shall be within what may be termed 'striking distance' of the organs of the female? Or, is the virile member to be treated as a gun which is harmless until brought within 'carrying distance' of the target? We think not." *Jackson v. State*, 91 Ga. 322, 18 S. E. Rep. 132, 44 Am. St. Rep. 25, *per* Bleckley, C. J.

Resistance.

3. "It requires no 'Locke on the Mind' or other philosophical teaching to tell the average man" the fact that "the very vanity of her sex, if nothing else,

will compel a certain degree of resistance" by a woman before consenting to illicit intercourse. *Barnett v. State* (Tex. Crim. App. 1900), 62 S. W. Rep. 765, *per Davidson*, P. J.

Evidence.

4. A man wearing nothing but his shirt does not get into the bed of a married woman who is not his wife at two o'clock in the morning to say his *pater noster*. *State v. Smith*, 80 Mo. 516.

5. When a man burglariously enters a room where a young lady is sleeping, and grasps her ankle, without any attempt at explanation when she screams, this is some evidence of an attempt to commit a rape, and must be submitted by the court to the jury. *State v. Boon*, 13 Ired. L. (35 N. Car.) 244, 57 Am. Dec. 555.

6. "It cannot be contended either that bachelorhood in itself, or the nonaccess of a married man in itself, is any evidence that the man would attempt an assault and battery upon a woman, either with or without the purpose of rape." *Haulisch v. Boller* (N. Y. App. Div. 1902), 75 N. Y. Supp. 992, *per Jenks*, J.

Reasonable Doubt.

See INSTRUCTIONS, 8.

REBELLION.

The war waged by the South against the United States was a "monster insurrection" standing "forth

before the world as the embodiment and personification of injustice and of wrong, of barbarity, slavery, and treason; in fact, of every villainy and of every crime." *George v. Concord*, 45 N. H. 434, *per Sargent, J.* (decided in 1864).

RECEIVERS.

1. An application for an interlocutory order appointing a receiver is an "advance raid into the enemy's camp," and is "an effort to collect together and secure the fruits of victory before completing the march and fighting the battle." *Early v. Oliver*, 63 Ga. 11, *per Bleckley, J.*

2. "To make drugs by concealed methods or from undeclared materials, for dissemination among the people, is a business of great responsibility, affecting more or less the public health; and for a court to engage in it, by a receiver or otherwise, has the appearance of being rash." *Merrell v. Pemberton*, 62 Ga. 29, *per Bleckley, J.*

3. "The court in Georgia has no official banker, and no bank but the receiver himself. He is its Bank of England. . . . While the fund is passing down the brooks and rivers, it may flow along the usual channels of general business, but when it reaches the ocean it must stop, unless the court orders a reflux current. There is no beyond." *Ricks v. Broyles*, 78 Ga. 610, 3 S. E. Rep. 772, 6 Am. St. Rep. 280, *per Bleckley, C. J.*

Recognizance.

See BAIL.

RECORDS.

Entry of indictment, see INDICTMENTS, 6.

On appeal, see APPEAL AND ERROR, 7-10.

1. "A government record is not necessarily true." *Daly v. Bernstein*, 6 N. Mex. 380, 28 Pac. Rep. 764, *per Seeds, J.*

2. "Although the tendency of the present day is towards condensation, and to exclude from consideration the 'mint and anise and cummin' of the law and give judgment on its 'weightier matters,' many members of the legal profession continue the use of verbose, redundant, and antiquated forms, and incumber the records unnecessarily by setting forth in many pages matter the substance of which could be clearly stated in less than one page." *Gate City Gas-Light Co. v. Farley*, 95 Ga. 796, 23 S. E. Rep. 119, *per Simmons, C. J.*

Reformation.

Of drunkards, see DRUNKENNESS, 20.

Rehearing.

See APPEALS, 21, 22.

RELEASE AND DISCHARGE.

The word "ended" used in a release "means final, definite, complete, conclusive. It imports what will

be when the Apocalyptic Angel, with one foot on the Sea and the other upon the Earth, shall lift his hand to Heaven and swear, by Him that liveth forever and ever, that there shall be '*Time no longer.*' " Bonsack Machine Co. v. Woodrum, 88 Va. 512, 13 S. E. Rep. 994, *per* Fauntleroy, J.

Replevin.

See ACTIONS, 3.

Replication.

See PLEADING, 25.

Reputation.

See EVIDENCE, 20, 21.

For truth and veracity, see WITNESSES, 15.

Rescission.

Of contract, see SALES, 5.

RESIDENCE.

"The penitentiary is not a place of residence." Guarantee Co. of North America v. First National Bank of Lynchburg, 95 Va. 480, 28 S. E. Rep. 909, *per* Riely, J.

RES JUDICATA.

"Res judicata renders white that which is black, and straight that which is crooked." Jeter v. Hewitt, 22 How. (U. S.), 352, *per* Campbell, J.

RESTITUTION.

“Restitution before absolution is as sound in law as in theology.” Summerall *v.* Graham, 62 Ga. 729, *per* Bleckley, J.

Review.

See APPEAL AND ERROR.

RIOT.

Three persons do not constitute the “multitude” or “unusual number” which of itself tends to excite terror; nor is the carrying of an axe to a sawmill an act having such tendency. Pike *v.* Witt, 104 Mass. 595.

ROBBERY.

See also INSANE PERSONS, 4.

“He that is robbed, not knowing what is stolen,
Let him not know it, and he's not robbed at all.”

Quoted by Bleckley, C. J., in Coleman *v.* Jenkins, 78 Ga. 605, 3 S. E. Rep. 444.

RULE IN SHELLEY'S CASE.

The rule in Shelley's Case is the “Don Quixote of the law, which, like the last knight errant of chivalry, has long survived every cause that gave it birth, and now wanders aimlessly through the reports, still vigorous, but equally useless and dangerous.” Stamper *v.* Stamper, 121 N. Car. 251, 28 S. E. Rep. 20, *per* Douglas, J.

RULES.

1. "A few rules are well settled." *Rice v. Butler*, 25 N. Y. App. Div. 388, *per* Follett, J.

2. "The rules of the court, while subject to modification when the promotion of justice demands it, must not be considered as mere scarecrows of the law." *Mahony v. Marshall*, 2 Idaho 1065, 29 Pac. Rep. 110, *per* Huston, J.

SACRILEGE.

It is sacrilege to steal an iron pot and a snatch-block kept in a church and the property of the church-wardens. *Rex v. Rourke*, R. & R. C. C. 386.

SALES.

Evidence in action to recover price, see EVIDENCE, 10.

"A false balance is abomination to the Lord ; but a just weight is his delight." *Quoted* by Martin, C., in *Clifton v. Sparks*, 82 Mo. 115.

In general.

1. "Business men do not pay cash for property in moonshine or dreamland." *Adams Express Co. v. Ohio*, 166 U. S. 185, 17 Sup. Ct. Rep. 604, *per* Brewer, J.

2. In Rhode Island there is no better place for a sale than Providence. *Potter v. Thompson*, 10 R. I. 1.

Validity—Public policy.

3. Contracts for the sale and purchase of gold are

not void as against public policy. *Brown v. Speyers*, 20 Gratt. (Va.) 296.

Fraudulent representations.

4. No action for fraud can be maintained upon a representation, made by the seller of a stallion, that he will not produce sorrel colts, as it is necessarily an expression of a mere opinion. *Scroggin v. Wood*, 87 Iowa 497, 54 N. W. Rep. 437.

Rescission of contract.

5. The purchaser of a pony, with the option of returning it at the end of six months if dissatisfied, does not act arbitrarily in rescinding the contract, where the pony is choked to death, without his fault, the night after the purchase, by a slip halter placed upon it at the suggestion of the seller. *Lyons v. Stills*, 97 Tenn. 514, 37 S. W. Rep. 280.

SCHOOLS AND COLLEGES.

See also LEGISLATURES, 1.

Bible society, see WORDS AND PHRASES, 19.

Use of schoolhouse for religious purposes, see THEOLOGICAL JURISPRUDENCE, 15.

In general.

1. A school is not a nuisance. *Harrison v. Good*, L. R. 11 Eq. Cas. 338.

2. "Experience undoubtedly is the better part of education. In all professional and business affairs it

commands the highest price." *Brown v. U. S.*, 18 Ct. Cl. 537, *per* Scofield, J.

3. The University of the State of New York is not an Indian and has no statutory right or power to be constituted an Indian. *Onondaga Nation v. Thacher*, 53 N. Y. App. Div. 561.

4. A stereoscope is not an "appendage for the schoolhouse." *School-District No. 29 v. Perkins*, 21 Kan. 536, 30 Am. Rep. 447.

5. The dwelling of a college professor is not occupied for literary purposes. *Kendrick v. Farquhar*, 8 Ohio 189.

6. "More instructive lessons are taught in courts of justice than the church is able to inculcate. Morals come in the cold abstract from the pulpit; but men smart under them practically when juries are the preachers." *Kendrick v. McCrary*, 11 Ga. 603, *per* Lumpkin, J.

School teachers.

7. A man who habitually indulges in profanity and Sabbath-breaking is not "qualified in respect to moral character" as a school teacher under Laws Mich. 1875, p. 36. *Wieman v. Mabree*, 45 Mich. 484, 8 N. W. Rep. 71, 40 Am. Rep. 477.

8. "The question whether a young lady who has attained the age of only eighteen, and obtained a diploma, is thoroughly fitted for a teacher of children,

and could with any certainty count upon receiving a certain scale of wages, is altogether uncertain." *Thorp v. Smith*, 63 N. J. Eq. 70, 51 Atl. Rep. 437, *per Pitney*, V. C.

Excuse for absence from school.

9. If a father can excuse his minor child from school, an adult pupil can excuse himself. *State v. Mizner*, 50 Iowa 145, 32 Am. Rep. 128.

Seamen.

See MARITIME LAW, 5.

SEDUCTION.

See also BIGAMY ; WORDS AND PHRASES, 50.

Of typewriter by lawyer, see LAWYERS, 17.

1. The fact that a woman goes in good society is evidence that she is of chaste character. *Crandall v. People*, 2 Laus. (N. Y.) 309.

2. Where a man has had sexual intercourse with a woman without either raping or seducing her, he cannot afterwards seduce her. *Brock v. State*, 95 Ga. 474, 20 S. E. Rep. 211.

3. A woman who engages in sexual intercourse with her male acquaintances as opportunities present themselves, and who will make opportunities for that purpose, cannot be seduced. *Stowers v. Singer* (Ky. 1902), 68 S. W. Rep. 639.

Self-Defense.

See ASSAULT AND BATTERY ; HOMICIDE, 3-5.

Separation.

See HUSBAND AND WIFE, 41-44.

SET-OFF AND COUNTERCLAIM.

“Half a negro is not matter of set-off.” *Smock v. Warford*, 4 N. J. L. 348, *per* Kirkpatrick, C. J.

SHERIFFS.

See also OFFICE AND OFFICERS.

1. “The sheriff is bound to know some law.” *Treadwell v. Beauchamp*, 82 Ga. 736, 9 S. E. Rep. 1040.

2. “It is the duty of the sheriff to furnish fuel for the courts.” *Cole v. White County*, 32 Ark. 45, *per* Harrison, J.

3. “The political office of sheriff does not consist of a room or rooms.” *People v. Dike* (Supm. Ct. Spec. T.), 75 N. Y. Supp. 801, *per* Gaynor, J.

Slander.

See LIBEL AND SLANDER.

Snakes.

See ANIMALS, 43.

SOCIETIES AND CLUBS.

See also CORPORATIONS.

Bible society, see WORDS AND PHRASES, 19,

Religious societies, see THEOLOGICAL JURISPRUDENCE, 12.

1. A meeting for culture and improvement in sacred and church music is not an assembly for the promotion of a moral or benevolent object. *State v. Gager*, 28 Conn. 232.

2. A member of a society by becoming one of the sureties on the official bond of a colored citizen is not guilty of such "ungentlemanly conduct" as will warrant his expulsion from the society. *State v. Georgia Medical Society*, 38 Ga. 608, 95 Am. Dec. 408.

Soldiers.

See ARMY.

SPECIFIC PERFORMANCE.

"Contracts cannot be specifically performed *vi et armis*." *Thorn v. Danzinger*, 50 Ill. App. 307, *per* Gary, J.

Spiritualism.

See FALSE PRETENCES, 1.

STARE DECISIS.

See also COURTS, 10 ; OBITER DICTA.

"There is no power in Venice
Can alter a decree established.
'Twill be recorded for a precedent,
And many an error by the same example
Will rush into the state."

Quoted by Hurt, J., in *Massey v. State*, 31 Tex,

Crim. 371, 20 S. W. Rep. 758 ; and by Dent, J., in *Gall v. Tygarts Valley Bank*, 50 W. Va. 597, 40 S. E. Rep. 380.

1. "It belongs to ruminants alone to regurgitate their food ; man does not." *State v. Thayer*, 158 Mo. 36, 58 S. W. Rep. 12, *per* Sherwood, J., *dissenting*.

2. Precedents can doubtless be found for almost any side of a question among the forty-five states of the Union. *Cowell v. Gregory*, 130 N. Car. 80, 40 S. E. Rep. 849, *per* Douglas, J.

3. A judgment of the Supreme Court rendered by a majority of the court is not "absolutely binding" in a subsequent case. *Rountree v. Rutherford*, 65 Ga. 444.

4. A question may be said to be settled when it has been decided in one way only "twice by the Supreme Court of the United States, seventeen times by the Supreme Court of California, five times by the Supreme Court of Colorado, six times by the Supreme Court of Nevada, twice by the Supreme Court of Montana, once by the Supreme Court of New Mexico, twice by the Supreme Court of Utah, once by the Supreme Court of Oregon, and repeatedly by the Supreme Court of Idaho." *Hillman v. Hardwick*, 2 Idaho 983, 28 Pac. Rep. 438, *per* Huston, J.

STATES.

Jurisdiction of United States courts over, see **COURTS**, 14.

Recovery of alimony by, see **ALIMONY**.

“ What constitutes a State ?

Not high raised battlements, nor labor'd mound—
Nor cities proud—

No ; Men, high-minded men—

Men who their duties know,

But know their rights, and knowing, dare maintain ;

Prevent the long-aimed blow,

And crush the tyrant while they rend the chain—

These constitute a State.”

Quoted by Brevard, J., in State v. Stark, 3 Brev. (S. Car.) 101.

The state of Georgia is “certainly respectable.”
Chisholm v. Georgia, 2 Dall. (U. S.) 419, per Wilson, J.

STATUTES.

See also LEGISLATURES.

In general.

1. “Our legislative bodies have sometimes made strange enactments.” *People v. Crilley, 20 Barb. (N. Y.) 246, per Strong, J.*

2. “An Act of Parliament can do no wrong, though it may do several things that look pretty odd.” *London v. Wood, 12 Mod. 669, per Lord Holt, quoted in Com. v. Lane, 113 Mass. 458, 18 Am. Rep. 509.*

3. Statutes are not to be annulled by the accidental displacement of a pin. *State v. Frank, 60 Neb. 327, 83 N. W. Rep. 74.*

4. Legislative legerdemain and chicanery will not

be allowed to pollute the statute book. *People v. Highway Com'rs*, 53 Barb. (N. Y.) 70.

5. A solemn act of the General Assembly could not give a family to a man by calling him the head of a family. *Mehaffey v. Hambrick*, 83 Ga. 597, 10 S. E. Rep. 274, *per* Bleckley, C. J.

6. "We should be slow to believe that human ingenuity has been exhausted in the concoction of an unconstitutional enactment." *State v. Springfield Tp.*, 6 Ind. 83, *per* Stuart, J.

7. "The various Acts of Congress imposing duties upon imports are too full of examples of tautology and repetition. . . . They show very great, and often quite needless, particularity in enumeration, accompanied by general terms plainly including the same things also mentioned in detail." *Reiche v. Smythe*, 7 Blatchf. (U. S.) 235, *per* Woodruff, J.

Construction of statutes.

8. It sometimes happens that statutes are misconstrued through undue love of "the perfection of human reason." *Price v. Wisconsin Marine & F. Ins. Co.*, 43 Wis. 267, *per* Ryan, C. J.

9. "Any construction which implies that the legislature was ignorant of the meaning of the language it employed" belongs to the category of constructions to be avoided, "if it may be." *Montclair v. Ramsdell*, 107 U. S. 147, 2 Sup. Ct. Rep. 391.

10. "The punctuation of a statute, as printed, affords no very decisive means for determining its construction." *U. S. v. Three Railroad Cars*, 1 Abb. (U. S.) 196, *per* Chase, C. J.

11. A statute enacting that a prisoner who breaks prison shall be guilty of felony does not extend to a prisoner who breaks out when the prison is on fire, "for he is not to be hanged because he would not stay to be burnt." *U. S. v. Kirby*, 7 Wall. (U. S.) 482.

12. "The omission of a condition is certainly not the same thing as the expression of a condition." *Pirie v. Chicago Title, etc., Co.*, 182 U. S. 438, 21 Sup. Ct. Rep. 906, 5 Am. Bank. Rep. 814, *per* McKenna, J.

Repeal and suspension.

13. Where a statute has been repealed, but it has existed so long that some of the profession think that it ought to be held to be the law, the court nevertheless will not regard it as in existence. *Jesup v. City Bank of Racine*, 14 Wis. 331.

14. A repealed statute is dead, and no sting can be inflicted by it; but one which still lives, although displaced for a time, as to its full effect, is not without power to vindicate its infraction before its suspension." *Winterton v. State*, 65 Miss. 238, 3 So. Rep. 735, *per* Campbell, J.

Steamboats.

See INNS AND INNKEEPERS; ADMIRALTY, 2.

STENOGRAPHERS.

Lawyers' knowledge of shorthand, see **LAWYERS**, 11.

The court will take judicial notice of the fact that stenographers may make mistakes. *Shepherd v. Snodgrass*, 47 W. Va. 78, 34 S. E. Rep. 879.

Stepfathers.

See **MOTHERS-IN-LAW AND THE LIKE**, 5.

Stock.

See **CORPORATIONS**, 9, 10.

STREET RAILROADS.

See also **MISCEGENATION** ; **PROPHECIES**, 2.

In general.

1. "A city railroad is a mere omnibus upon rails." *Hoyt v. Sixth Avenue R. Co.*, 1 Daly (N. Y.) 528, *per* Daly, J.

2. "The conductor of a street-railroad car is not a driver of a 'carriage.'" *Isaacs v. Third Ave. R. Co.*, 47 N. Y. 122, 7 Am. Rep. 418, *per* Allen, J.

Horse-cars.

3. "A horse-car cannot be handled like a rapier." *Hamilton v. West End Street R. Co.*, 163 Mass. 199, 39 N. E. Rep. 1010, *per* Holmes, J.

Trolley-cars.

4. "A trolley-car has characteristics of its own. It

is a large, smooth-running vehicle of great weight." *McGrath v. North Jersey St. R. Co.*, 66 N. J. L. 312, 49 Atl. Rep. 523, *per Adams*, J.

Necessity for fresh air.

5. It is essential to health and comfort to have pure air in street cars. *State v. Heidenhain*, 42 La. Ann. 483, 7 So. Rep. 621, 21 Am. St. Rep. 388.

How passenger may alight.

6. A passenger has the right to step off of a street car while he is facing in any direction that he chooses. *Rouser v. Washington, etc., R. Co.*, 13 App. Cas. (D. C.) 320, *per Shepard*, J.

STREETS AND HIGHWAYS.

See also BRIDGES; EMINENT DOMAIN, 1; FENCES.

Assessment for sprinkling street, see TAXATION, 2.

Cutting grass growing on, see TRESPASS, 3.

Repairing defects on Sunday, see SUNDAY, 8.

Riding bicycle on, see BICYCLES, 3-6.

Who is a traveler, see WORDS AND PHRASES, 57.

In general.

1. "In laying out a town or city, . . . streets are absolutely necessary." *Montgomery v. Townsend*, 80 Ala. 489, 2 So. Rep. 155, 60 Am. Rep. 112.

2. If a road is not closed, or inclosed, or shut up, or obstructed, it must be open; and a road that is open cannot well be an unopened road. *Topeka v. Russam*, 30 Kan. 550, 2 Pac. Rep. 669.

3. "When there is a certain well-beaten track upon any subject, which the commercial public habitually follows, which business men almost or quite universally pursue, without express promise or dictation, everybody has a right to assume that all similarly situated, or in the way of that road, will pursue it." *Munn v. Burch*, 25 Ill. 35, *per* Caton, C. J.

Creation of streets.

4. "A street becomes a street, as between grantor and grantee, by being so designated on the map by which the lots are sold. It is quite likely that a park may become a park in the same manner. But there is neither authority nor principle for saying that the lands may be made a street by designating them as a park; it would be as unreasonable as to attempt to create a park from what the owner should designate upon his map as a street." *Perrin v. New York Cent. R. Co.*, 36 N. Y. 120, *per* Hunt, J.

Rights and duties of travelers.

5. "Sidewalks are made for the use of the lame, the halt, and the blind, as well as for persons in the full possession of their faculties." *Yeager v. Spirit Lake* (Iowa 1902), 88 N. W. Rep. 1095.

6. On a dark night in a country road a pedestrian must walk in the middle of the road, otherwise he will be presumptively guilty of contributory negli-

gence. *Siegler v. Mellinger*, 203 Pa. St. 256, 52 Atl. Rep. 175.

7. Where a person was traveling in a beaten track there can be no finding that he was on the wrong side of the road. *Joslin v. Le Baron*, 44 Mich. 160, 6 N. W. Rep. 214.

Ice on highways.

8. In a climate like that in Massachusetts it is impossible to prevent the existence of ice in the highways. *Luther v. Worcester*, 97 Mass. 268, *per* Bigelow, C. J.

SUBROGATION.

Subrogation, a native of equity but an alien in law, is naturalized in the latter by the code and admitted to an equal standing throughout the whole juridical territory. *Hull v. Meyers*, 90 Ga. 674, 16 S. E. Rep. 653, *per* Bleckley, C. J.

SUICIDE.

Indirect, see CONTRIBUTORY NEGLIGENCE, 1.

By court.

1. A court of justice cannot, under the constitution and the laws, commit suicide. *State v. Searcy*, 46 Mo. App. 421.

By homesick pony.

2. It is easy to explain why a pony transferred from the plains of Texas to the mountains of East Tennessee

should commit suicide. *Southern R. Co. v. Phillips*, 100 Tenn. 130, 42 S. W. Rep. 925.

SUNDAY.

In general.

1. By observing Sunday, Christianity may be kept alive. *Rex v. Younger*, 5 T. R. 449, *per* Kenyon, C. J.

2. Process against a Jew who observes Saturday as holy time, if made returnable on Saturday, is void. *Martin v. Goldstein*, 39 N. Y. Supp. 254.

Validity of contracts.

3. A subscription to a church made on Sunday is void. *Catlett v. M. E. Church*, 62 Ind. 365, 30 Am. Rep. 197.

4. A contract by a livery-stable keeper to hire a horse on Sunday, for purposes of business or pleasure, is void. *Stewart v. Davis*, 31 Ark. 518, 25 Am. Rep. 576.

Offenses against Sunday laws.

5. It is an offense to do a gambling house or any place of amusement on Sunday. *People v. Maguire*, 26 Cal. 635.

6. It is no offense whatever to receive a Sunday newspaper at the post-office on Sunday and read it. *Hastings v. Columbus*, 42 Ohio St. 585.

7. Hunting game on Sunday is not in violation of a

statute which prohibits "work" and "labor." *State v. Carpenter*, 62 Mo. 594.

8. It is not unlawful to repair a defective highway on Sunday, it being always proper for people to mend their ways. *Flagg v. Millbury*, 4 Cush. (Mass.) 243.

Purchase of medicine.

9. "The buying on Sunday of peppermint lozenges, when sold by a man carrying on the business of a druggist and dealer in medicines, in a shop not usually kept open the whole of the day on Sunday, but only for a limited time, is the purchase of a 'medicine.'" *Reg. v. Howarth*, 33 U. C. Q. B. 537, *per* Richards, C. J.

Works of necessity.

10. It is necessary to milk cows on Sunday. *Topeka v. Hempstead*, 58 Kan. 328, 49 Pac. Rep. 87.

11. "It is a necessity to provide and prepare food in the private family on Sundays as well as week days." *Reg. v. Albertie*, 20 Can. L. T. 123, *per* McDougall, J.

12. The court does not judicially know that smoking is a necessity to those who have acquired the habit, so as to make a sale of cigars to such a person on Sunday "necessary labor." *Mueller v. State*, 76 Ind. 310, 40 Am. Rep. 245.

13. The defendant was poor—had no implement of his own with which to cut his wheat, which was wasting from over-ripeness—could borrow none until

Saturday evening—swapped work with his neighbors during the week—hired a negro and cut his own wheat on Sunday. *Held*, he was not justified in breaking the Sabbath. *State v. Goff*, 20 Ark. 289.

Surgeons.

See PHYSICIANS AND SURGEONS, 4-6.

Surplusage.

See PLEADING, 8.

Survivorship.

See MEDICAL JURISPRUDENCE, 19.

TAXATION.

See also CUSTOMS DUTIES.

Payment of taxes by administrator, see EXECUTORS AND ADMINISTRATORS.

In general.

1. "Men are usually content with paying the taxes on their own lands and suffering others to do the same." *Glasscock v. Hughes*, 55 Tex. 461, *per* Quinan, J.

Assessment for sprinkling street.

2. Running a sprinkling cart now and then in front of a vacant lot does not add to its market value. Nor is there in such occasional "laying of the dust" any semblance of permanency. It is as evanescent as the early and the later dew, and it is no more within

the power of a municipality to assess property for the sprinkling of a street on which it abuts than to hire a "rain maker." *N. Y. Life Ins. Co. v. Prest* (C. C.), 71 Fed. Rep. 815, *per* Philips, J.

Swearing off taxes.

3. The lax state of morals in American communities, which excuses if not encourages persons to avoid the payment of taxes justly due to the national, state, and municipal governments by the use of dishonest means, will influence the court to impose a light punishment on one convicted of perjury to avoid the payment of taxes. *U. S. v. Smith*, 1 Sawy. (U. S.) 277, Fed. Cas. No. 16,341, *per* Deady, J.

Telegraph Companies.

See LIBEL AND SLANDER, 2.

THEATRES AND SHOWS.

"All the word's a stage,
And men and women only players."

Quoted by Brady, J., in *Society for the Reformation of Juvenile Delinquents v. Diers*, 60 Barb. (N. Y.) 152.

"Bring all your lutes and harps of heaven and earth,
Whate'er co-operates to the common mirth."

Quoted by Hammond, J., in *Wilkins Shoe-Button Fastener Co. v. Webb*, 89 Fed. Rep. 982.

1. An actor or theatrical performer is not a "laborer." *In re Ho King*, 14 Fed. Rep. 724,

2. A minstrel show does not necessarily have a tendency to corrupt the public morals, but it serves a salutary purpose if it affords diversion and music to the million at a small expense. *Christy v. Murphy* (Supreme Ct. Spec. T.), 12 How. Pr. (N. Y.) 77, *per* Clerke, J.

THEOLOGICAL JURISPRUDENCE.

See also CLERGYMEN; SACRILEGE.

“Against an elder receive not an accusation, but before two or three witnesses.” *Quoted* by Thornton, J., in *Chase v. Cheney*, 58 Ill. 509, 11 Am. Rep. 95.

“For modes of faith let graceless zealots fight,
His can't be wrong whose life is in the right.”

Quoted by Balcom, J., in *Stanbro v. Hopkins*, 28 Barb. (N. Y.) 265.

In general.

1. “Righteousness is the same to-day as it was yesterday.” *Crichfield v. Bermudez Asphalt Paving Co.*, 174 Ill. 466, 51 N. E. Rep. 552, *per* Magruder, J.

2. “There is no act which Christianity forbids that the law will not reach.” *Bird v. Holbrook*, 4 Bing. 628, *per* Best, C. J.

3. “No laws can be of avail except in so far as they are founded on religion.” *Williams v. Paul*, 6 Bing. 653, *per* Park, J.

4. "To deceive a single soul the devil hath power to assume a 'pleasing shape.'" *Sharon v. Sharon*, 75 Cal. 1, 16 Pac. Rep. 345, *per McKinstry, J.*

5. The ancient theological discussion whether angels could dance on the point of a needle is profitless. *Grunson v. State*, 89 Ind. 533, 46 Am. Rep. 178, *per Elliott, J.*

Investigation of theology by courts.

6. Courts of law are, by their habits and constitution, ill-fitted for the investigation of theological questions. *Atty. Gen. v. Dublin*, 38 N. H. 459, *per Perley, C. J.*

Protestantism.

7. Adherence to the Protestant faith and Protestant form of baptism is not at all necessary where it is sought to suppress vice and immorality. *Groesbeeck v. Dunscomb* (N. Y. Super. Ct. Spec. T.), 41 How. Pr. (N. Y.) 323, *per McCunn, J.*

Miracles.

8. "The age of miracles has long since passed away." *Nicholson v. Daniel*, 152 Pa. St. 461, 25 Atl. Rep. 1022, *per Paxson, C. J.*

What constitutes sin.

9. The court will not take judicial notice that inflamed or weak eyes constitute a sin within the Biblical rule that the sins of the fathers shall be visited

upon the children. *Birmingham Southern R. Co. v. Cuzzart* (Ala. 1902), 31 So. Rep. 979.

Secular business.

10. "Giving a note certainly pertains to things of this world, and is a matter of secular business. The most latitudinarian would scarcely consider it as having a spiritual character." *Allen v. Deming*, 14 N. H. 133, 40 Am. Dec. 179, *per* Gilchrist, J.

King James' Bible.

11. "With respect to the Bible which was translated in the reign of James the First, and which indisputably was translated under his sanction, and by virtue of his authority, it does not appear that he contributed anything towards the expense." *Manners v. Blair*, 3 Bligh. N. S. 391, *per* Lord Lyndhurst.

Religious societies.

12. A generous Christian spirit should characterize the action of religious societies. *Bristor v. Burr*, 120 N. Y. 427, 24 N. E. Rep. 937, *per* Bradley, J.

Divine services or worship.

13. "Reading prayers or a sermon in a private family is not performing divine service." *Trebec v. Keith*, 2 Atk. 498.

14. "Singing is recognized as a part of divine worship, among almost all denominations of Christians. Whether it should or should not be accompanied with

instrumental music must be determined by those who administer the discipline of the church to which they belong." *Tartar v. Gibbs*, 24 Md. 323, *per* Bowie, C. J.

15. The use of a public schoolhouse for a single religious gathering is illegal and may be enjoined by a taxpayer. *Spencer v. Joint School-Dist. No. 6*, 15 Kan. 259, 22 Am. Rep. 268, *per* Brewer, J.

Union of different denominations.

16. "Unions between different denominations of Christians are proved, by all experience, to be most unwise." *Brown v. Lutheran Church*, 23 Pa. St. 495, *per* Woodward, J.

Price of religion.

17. "The services of Religion to the state are of untold value ; but it is to the glory of Religion in this country that it serves as a volunteer, without money and without price." *Atlanta v. First Presbyterian Church*, 86 Ga. 730, 13 S. E. Rep. 252, *per* Bleckley, C. J.

18. "If any debt ought to be paid, it is one contracted for the health of souls—for pious ministration and holy services. If any class of debtors ought to pay as a matter of moral as well as legal duty, the good people of a Christian church are that class. Some of the virtues are in the nature of moral luxuries, but this is an absolute necessary of social life. It

is the hog and hominy, the bacon and beans of morality, public and private. It is the exact virtue, being mathematical in its nature. Mercy, pity, charity, gratitude, generosity, magnanimity, etc., are the liberal virtues. They flourish partly on voluntary concessions made by the exact virtue, but they have no right to extort from it any unwilling concession. They can only supplicate or persuade. A man cannot give in charity or from pity, hospitality, or magnanimity, the smallest part of what is necessary to enable him to satisfy the demands of justice." *Lyons v. Planters' L., etc., Bank*, 86 Ga. 485, 12 S. E. Rep. 882, *per* Bleckley, C. J.

Title.

See PROPERTY, 3-5.

TOBACCO.

Evidence as to use of, see HOMICIDE, 7.

Judicial notice that cigarettes are noxious, see EVIDENCE, 36.

Necessity of smoking on Sunday, see SUNDAY, 12.

Smoking during trial, see NEW TRIAL, 8.

Right to use.

The right to enjoy the use of tobacco is a natural right that is not forbidden by law. *Talbott v. Stemmons*, 89 Ky. 222, 12 S. W. Rep. 297, 25 Am. St. Rep. 531.

Public policy.

"Smoking in itself is not to be condemned for any

reason of public policy. It is agreeable and pleasant, almost indispensable, to those who have acquired the habit." *State v. Heidenhain*, 42 La. Ann. 483, 7 So. Rep. 621, 21 Am. St. Rep. 388, *per* McEnery, J.

Nature and effects.

1. Tobacco is a food and drink. *Baker v. Jacobs*, 64 Vt. 197, 23 Atl. Rep. 588, *per* Taft, J.

2. Tobacco is not an article of food, neither is it a drug or medicine. *State v. Ohmer*, 34 Mo. App. 115, *per* Biggs, J.

3. Judicial notice will be taken of the fact that tobacco is used by a majority of men, by the good and bad, learned and unlearned, rich and poor, and of the further fact that its manipulation in one room can produce no harm to the health of the occupants of other rooms in the same house. *In re Jacobs*, 98 N. Y. 98, 50 Am. Rep. 636, *per* Earl, J.

Tornado Insurance.

See INSURANCE, 9.

Torts.

See LIBEL AND SLANDER; TRESPASS; TROVER AND CONVERSION.

Trains.

See RAILROAD COMPANIES, 3.

TREASON.

See also REBELLION.

What constitutes.

1. The man who starts a revolution against the government, if he succeeds, is a patriot ; if he fails he is a traitor. *Koehler v. Farmers' and Drovers' Nat. Bank*, 17 Civ. Pro. (N. Y.) 307, 25 N. Y. St. Rep. 222, 6 N. Y. Supp. 470, *per* Van Brunt, J.

Sufficiency of evidence.

2. One witness of his own knowledge, and another by hearsay from him, though at the third or fourth hand, are two sufficient witnesses in high treason. *Thomas's Case*, 1 Dyer 99b.

TRESPASS.**By boys.**

1. "It is part of a boy's nature to trespass, especially where there is tempting fruit." *Gillespie v. McGowan*, 100 Pa. St. 144, 45 Am. Rep. 365, *per* Paxson, J.

What constitutes.

2. Entering a house by breaking locks, doors, windows, and bolts is not a peaceable entry. *Baptist Society v. Fisher*, 18 N. J. L. 240.

3. Trespass *q. c. f.* lies for cutting and taking away grass growing on a highway upon which the plaintiff's land abuts. *Cole v. Drew*, 44 Vt. 49, 8 Am. Rep. 363.

Adjoining landowners.

4. It is not trespass for one of two adjoining pro-

prietors to hang property on a division fence erected entirely by the other. *Hannabalson v. Sessions* (Iowa 1902), 90 N. W. Rep. 93.

5. While one may stand by his neighbor's fence on his own lot, and breathe across it over his neighbor's land, and may permit the smoke and smell of his kitchen to pass over it, and may talk, laugh, and sing or cry, so that his conversation and hilarity or grief is heard in his neighbor's yard, he has no right to shake his neighbor's fence, or to throw sand, earth, or water upon his neighbor's land in ever so small a quantity. *Hennessey v. Carmony*, 50 N. J. Eq. 616, 25 Atl. Rep. 374, *per* Pitney, V. C.

TRIAL.

See also INSTRUCTIONS ; JURY ; and the cross references given under PRACTICE.

In general.

1. "The object of a trial is to ascertain the truth of the matter in controversy." *State v. Groves*, 119 N. Car. 822, 25 S. E. Rep. 819, *per* Clark, J.

2. Ordinary jurors ought to cope with but one case at a time. *Tribble v. Anderson*, 63 Ga. 31.

3. "Some cases task the anxious diligence of a court not by their difficulty but their simplicity." *Wells v. Savannah*, 87 Ga. 397, 13 S. E. Rep. 442, *per* Bleckley, C. J.

4. Setting turpentine on fire in the presence of the jury is apt to inflame their minds. *Faulkner v. State* (Tex. Crim. App. 1901), 65 S. W. Rep. 1093.

5. Murder trials "are not had as mere occasions to enforce discipline in the courts," as the public has "some interest" in them. *Henshaw v. State*, 67 Ark. 365, 55 S. W. Rep. 157.

6. On a criminal prosecution the defendant cannot station himself in any position he may desire, *e. g.*, he cannot place himself upon the bench or in the jury box. *State v. Copp*, 15 N. H. 212.

Card playing in jury room.

7. It is proper for the court to criticise the practice of card playing in the jury room between counsel and members of the jury. *Webber v. Hayes*, 117 Mich. 256, 75 N. W. Rep. 622.

8. "When Greek meets Greek, then comes the tug of war. Sparks, feathers, and dust are made to fly, but little blood shed, and from a vast amount of escaping steam the court must distil the true elixir of the law." *Porter v. Mack*, 50 W. Va. 581, 40 S. E. Rep. 459, *per Dent*, J.

Conduct of court.

9. "One of the greatest difficulties of a *nisi prius* judge is to keep his mouth shut." *Kane v. Kinnare*, 69 Ill. App. 81, *per Gray*, J.

10. The court should not compliment any witness. *Pound v. State*, 43 Ga. 88.

11. While a female witness twenty years of age is being examined, the court should not address her as "my girl." *State v. Burns* (Iowa 1903), 94 N. W. Rep. 238.

12. If the court does not rule out evidence in a high enough tone of voice, or if the pitch is wrong, the objection may be waived by acquiescence. *Wheatley v. West*, 61 Ga. 401.

13. In overruling a motion to strike out irrelevant evidence which has been admitted without objection it is improper for the court to remark "Too late. The mill will never grind with the water that has passed." *Blount v. Beall*, 95 Ga. 182, 22 S. E. Rep. 52.

TROVER AND CONVERSION.

When lies.

Trover lies against a postmaster for wrongfully withholding a newspaper from a person to whom it is mailed. *Teall v. Felton*, 1 N. Y. 537, 49 Am. Dec. 352.

TRUSTS AND TRUSTEES.

See also CHARITIES.

It is absurd to select an idiot as trustee. *Cartwright v. Wise*, 14 Ill. 417.

Twins,

See BASTARDY.

Ultra Vires.

See CORPORATIONS, 15.

UNDERTAKERS.

An undertaker is not necessarily an expert on physiological questions. *People v. Millard*, 53 Mich. 63, 18 N. W. Rep. 562.

Undue Influence.

See DURESS.

USURY.

"The theory that a contract will be usurious or not according to the kind of paper bag it is put up in, or according to the more or less ingenious phrases made use of in negotiating it, is altogether erroneous." *Pope v. Marshall*, 78 Ga. 635, 4 S. E. Rep. 116, *per* Bleckley, C. J.

VAGRANCY.

Hunting rogues, see HUNTING, 2.

Indictment for, see INDICTMENTS, 2.

"Why stand ye here all the day idle?" *Quoted* by Lumpkin, J., in *Waddel v. State*, 27 Ga. 262.

Tramps.

"Because a man is a tramp, he is not necessarily dangerous." *Savannah, etc., R. Co. v. Boyle*, 115 Ga. 836, 42 S. E. Rep. 242, *per* Cobb, J.

VENDOR AND PURCHASER.

"The right acquired by a vendee of land under

a valid executory contract of purchase is a valuable legal right." *Griel v. Lomax*, 86 Ala. 132, 5 So. Rep. 325, *per* Somerville, J.

VENUE.

Most abuses against individual rights originate in the city of New York. *In re Newkirk* (Supm. Ct. Spec. T.), 75 N. Y. Supp. 777, *per* Gaynor, J.

VERDICTS.

Directing, see INSTRUCTIONS, 13, 14.

Definition.

1. A verdict is the tissue into which by assimilation unassimilated food in the shape of evidence is converted. *Schley v. Schofield*, 61 Ga. 528.

Sufficiency of verdict.

2. Where a sealed verdict is returned reading: "We, the jury, agree to disagree, so say we all," it is proper to declare a mistrial. *Tervin v. State*, 37 Fla. 396, 20 So. Rep. 551.

3. In *Mitchell v. Com.*, 106 Ky. 602, 51 S. W. Rep. 17, the verdict of the jury was as follows: "Wee the joury, agree and find the defendant guilty as charged in the indite and sess his find \$100 dollars. Isaa Clouse." It was held that this was sufficient.

Verdict construed.

4. A verdict for eight hundred dollars less nothing

is equivalent to one for eight hundred dollars simply. North, etc., *St. R. Co. v. Crayton*, 86 Ga. 499, 12 S. E. Rep. 877, *per* Bleckley, C. J.

Wagers.

See GAMING.

Waiver.

See ESTOPPEL.

Obtained by duress, see DURESS, 3.

Of objections raised on appeal, see APPEAL AND ERROR, 18 ; TRIAL, 12.

War.

See REBELLION ; RECEIVERS, 1.

WAREHOUSEMEN.

“ A warehouse receipt.....is the shadow of an absent substance.” *Planters' Rice Mill Co. v. Merchants' Nat. Bank*, 78 Ga. 574, 3 S. E. Rep. 327, *per* Bleckley, C. J.

WATERS AND WATERCOURSES.

See also LAKES ; NAVIGABLE WATERS ; PROPERTY, 2.

“ What rudeness water for my use denies,
Whose endless store the common world supplies ?
Nor light nor air did Heaven create for one,
Nor gentle streams.”

Quoted by Walworth, C., in *Smith v. Adams*, 6 Paige (N. Y.) 435.

Uses of water.

1. "Water for domestic use is a necessity Water for the use of mills is a convenience only." *Auburn v. Union Water Power Co.*, 90 Me. 576, 38 Atl. Rep. 561.

2. "That the free use of water, especially during the summer months, tends towards the healthful condition of the body by reason of the increased cleanliness occasioned by such use, there can be no reasonable doubt." *Health Dept., etc., v. Rector, etc., of Trinity Church*, 145 N. Y. 32, 39 N. E. Rep. 833, 45 Am. St. Rep. 579, *per* Peckham, J.

Appropriation of water.

3. "No trespass upon or injury to real property being alleged, and no damages being claimed, it isobnoxious to the creative plan, and as inconsistent with the law of nature, to permit plaintiff to recover for water which he could not use, and did not desire to appropriate, as it would be under similar circumstances to grant him a money judgment for the value of sunlight or the free air of heaven." *Metcalf v. Nelson*, 8 S. Dak. 87, 59 Am. St. Rep. 746, *per* Fuller, J.

Judgment.

4. Where a creek or stream flows one hundred inches of water, a judgment which allows the appropriation of eight hundred inches is erroneous. *Hillman v. Hardwick*, 2 Idaho 983, 28 Pac. Rep. 438.

WEIGHTS AND MEASURES.

Judicial notice as to weight of artificial legs, see EVIDENCE, 26.

Quantity of liquor in drink, see INTOXICATING LIQUORS, 15, 16.

1. "A pint is less than five gallons." State v. Lavake, 26 Minn. 526, 6 N. W. Rep. 339, 37 Am. Rep. 415.

2. "It is easy to ascertain exactly the relative weight of material things. If the weight at one end of the beam is heavier than the weight at the other, the indication is apparent and unmistakable." People v. Dillon, 8 Utah 92, 30 Pac. Rep. 150, *per* Zane, C. J.

WILLS.

"Thou mak'st a testament
As worldlings do, giving thy sum of more
To that which had too much."

Quoted by Campbell, J., in Stewart v. Lispenard, 26 Wend. (N. Y.) 255.

Sufficiency of.

1. The following, written by the deceased, on a leaf of a timebook kept by him, is valid as a holograph will: "March th 4 Will my Properti to my wief my Death John Sullivan." Sullivan's Estate, 130 Pa. St. 342, 18 Atl. Rep. 1120.

Probate—Burden of proof.

2. After the *factum* of a will has been proven,

“what the propounders have to carry, on the score of sanity and freedom, is more in the nature of ballast than of cargo. It is just burden enough to sail with—no more.” *Thompson v. Davitte*, 59 Ga. 472, *per* Bleckley, J.

Construction.

3. Where a will devises a home on a farm, the devisee is entitled to board and maintenance. *Willet v. Carroll*, 13 Md. 459.

4. A bequest to the testator's widow of “a good and comfortable support and maintenance, both as to food, clothing, and nursing in health and sickness” at his house, includes a proper supply of fuel. *Conant v. Stratton*, 107 Mass. 474.

WITNESSES.

See also EVIDENCE.

Competency to testify as to drunkenness, see DRUNKENNESS, 17.

Teeth of witness as exhibits, see EXHIBITS.

In general.

1. It is immaterial whether a witness is white or black. *Dolan v. State*, 81 Ala. 11, 1 So. Rep. 707.

2. It is an unfortunate fact that witnesses often lie. *People v. O'Brien*, 130 Cal. 1, 62 Pac. Rep. 297.

3. “One who does not talk English well can tell the

truth as easily as he can tell that which is false." *State v. O'Brien*, 2 Idaho 1094, 29 Pac. Rep. 38, *per Morgan*, J.

4. A witness cannot testify of his own knowledge that a highway has been in existence for two hundred years. *Hampson v. Taylor*, 15 R. I. 83, 8 Atl. Rep. 331, 23 Atl. Rep. 732.

Competency—Children.

5. An opinion that hell is under the kitchen grate does not show competency of a child to testify. *Rex v. Williams*, 7 C. & P. 320, 32 E. C. L. 524.

6. A child ten years old is a competent witness if he believes that if he were to tell a story the old buggerman would get him and burn him. *Missouri, etc., R. Co. v. Johnson* (Tex. Civ. App. 1896), 37 S. W. Rep. 771.

7. Children under the age of six years "are as clay in the potter's hand, to be moulded, some to honor and some to dishonor. Lacking conscientiousness, they repeat with phonographic precision the things that have been told them to say, be they true or false." *State v. Michael*, 37 W. Va. 565, 16 S. E. Rep. 803.

Experts.

8. A man fifty-seven years old who has handled horses all his life and who is in the livery business is competent to testify that the tallow in the inside of a horse which died was melted from his being overdriven. *Johnson v. Moffett*, 19 Mo. App. 159.

9. A maker of or dealer in machinery has no peculiar fitness for solving literary problems and consequently is not competent to explain a contract as an expert. *Hill v. John P. King Mfg. Co.*, 79 Ga. 105, 3 S. E. Rep. 445.

10. "The firing of a pistol in a man's face, at the distance of a few feet, is not quite so common an occurrence as to have raised up a class of 'experts,' whose acquaintance 'with the laws of light and vision' makes their opinion [on a prosecution for assault with intent to murder] the only competent testimony, or gives to such opinions any preference over the proof of facts." *Smith v. State*, 2 Ohio St. 511.

Confidential communications.

11. The communication by a husband to his wife of a venereal disease may be a confidential communication, but it is not a breach of the confidential relations existing between them for the wife to testify to that fact. *Polson v. State*, 137 Ind. 519, 35 N. E. Rep. 907.

Memory.

12. "A man can recollect as well in the Italian language as he can in English." *State v. O'Brien*, 2 Idaho 1094, 29 Pac. Rep. 38, *per Morgan, J.*

Credibility.

13. Evidence that a man is living apart from his wife does not affect his credibility as a witness. *Hau-*

lisch v. Boller (N. Y. App. Div.), 75 N. Y. Supp. 992.

14. The court does not judicially know that negro witnesses are *prima facie* unworthy of belief, and cannot say, as St. Paul said of the Cretans, that they are always liars. Fonville v. State, 91 Ala. 39, 8 So. Rep. 688.

15. A man may acquire a reputation for truth and veracity which extends five or six miles from his place of residence. State v. Cushing, 14 Wash. 527, 45 Pac. Rep. 145, 53 Am. St. Rep. 883.

16. "Where witnesses otherwise unimpeached are testifying under circumstances calculated to create a strong bias, and they state what is in their nature incredible, their testimony is not necessarily to be believed." The Helen R. Cooper, 7 Blatchf. (U. S.) 378, *per* Woodruff, J.

17. "While a poor and obscure person may be naturally and at heart as truthful as a rich and prominent one, and even more so, nevertheless, other things being equal, property and position are in themselves some certain guaranty of truth in their possessor." Sharon v. Hill, 26 Fed. Rep. 337, *per* Deady, J.

18. The credibility of an interested witness is for the jury. "Interest is a great rascal; but is not an absolute reprobate. Its doom is not perdition at all events. It has a chance of salvation. It is not

obliged to commit perjury." *Davis v. Central Railroad*, 60 Ga. 329, *per* Bleckley, J.

Profligacy and lewdness.

19. The credibility of a witness is not affected by his having slept with lewd women. *Hudson v. State*, 41 Tex. Crim. 453, 55 S. W. Rep. 492.

20. "As the world goes and is, the sin of incontinence in a man is compatible with the virtue of veracity." *Sharon v. Hill*, 26 Fed. Rep. 337, *per* Deady, J.

21. "The conviction and execution of an individual upon the testimony of an abandoned woman, or of a profligate man, would be productive of melancholy reflections, but there is no rule of reason which would not apply with equal force to the credibility of either." *Craft v. State*, 3 Kan. 450.

Impeachment.

22. It is not competent for the purpose of impeaching a witness to show that he carries a pack of cards in his pocket and calls them his Bible. *Halley v. Webster*, 21 Me. 461.

23. A witness cannot be impeached by showing that she is the mother of men who have served terms in the penitentiary. *Lee v. State*, 66 Ark. 286, 50 S. W. Rep. 516.

24. "The law brands no witness as impeached just because he is not at peace with the scoundrel against

whom he testifies." *Skipper v. State*, 59 Ga. 63, *per* Bleckley, J.

Corroboration.

25. A pimp must be corroborated. *Whitenack v. Whitenack*, 36 N. J. Eq. 474.

Cross-examination.

26. There can be no cross-examination of a dead person. *State v. Simon*, 50 Mo. 370.

27. It is not proper to ask the plaintiff's witness on cross-examination if he had not said that he expected to pull the defendant's leg. *Fielding v. La Grange*, 104 Iowa 530, 73 N. W. Rep. 1038.

WOMEN.

See also HUSBAND AND WIFE.

As passengers, see CARRIERS.

As witnesses, see BASTARDY, 2.

Boasting of love conquests, see INSANE PERSONS, 12.

Commission of mayhem upon, see MAYHEM.

Judicial notice as to age of woman kissed, see EVIDENCE, 30.

Libel of, see LIBEL AND SLANDER, 8-13.

Personal injuries to, see DAMAGES, 2, 3.

Protection of, by equity, see EQUITY, 3.

"I will speak daggers to her, but use none."
Quoted by Haskell, J., in *Holyoke v. Holyoke*, 78 Me. 404, 6 Atl. Rep. 827.

“The wiles and guiles that women work
Dissembled with an outward show.”

Quoted by Sherwood, J., in *State v. Strattman*, 100 Mo. 540, 13 S. W. Rep. 814.

“If to her lot some female errors fall,
Look in her face and you'll forget them all.”

Quoted in *Harrington v. Com'rs*, 2 McCord L. (S. Car.) 400.

“When a woman will, she will,
You may depend on't ;
And when she won't, she won't,
And there's an end on't.”

Quoted by Huston, J., in *Jacobson v. Bunker Hill, etc., Min., etc., Co.*, 2 Idaho 863, 28 Pac. Rep. 396.

In general.

1. Women are citizens. *Blair v. Kilpatrick*, 40 Ind. 312.

2. It is sometimes worse to provoke a woman than to provoke a difficulty. *State v. Goode*, 130 N. Car. 651, 41 S. E. Rep. 3, *per* Clark, J.

3. It is no reflection upon married women to class them with infants, idiots, lunatics, and convicts. A mother holding her own baby on her lap is in better company than if she were with so-called “reformers.” *Weathers v. Boarders*, 124 N. Car. 610, 32 S. E. Rep. 881, *per* Douglass, J.

Constitution, nature, habits, etc.

4. “Thieves, rioters, gamblers, drunkards, or

otherwise disorderly persons are not generally women, nor while traveling do women often misbehave." *Brown v. Memphis, etc., R. Co.*, 7 Fed. Rep. 51, *per Hammond, J.*

5. "The notion that women belong to the weaker sex is only entertained by the credulous and unsophisticated. They are not easily beguiled." *Breon v. Henkle*, 14 Oregon 494, 13 Pac. Rep. 289, *per Thayer, J.*

6. "Some women may be so constituted that loud-mouthed curses upon themselves, their parents and friends, and coarse insinuations against their wifely virtue, will be received with perfect equanimity; and as to them, while it is cruel and inhuman treatment, it does not endanger life. But women who thrive upon such treatment are rare." *Berry v. Berry* (Iowa 1902), 88 N. W. Rep. 1075, *per Weaver, J.*

Talking.

7. "Women will talk, for God has made them so." *Richardson v. Roberts*, 23 Ga. 215, *per Lumpkin, J.*

8. "Young ladies are not to be held to a very strict accountability when talking to their young lady friends about their lovers." *State v. Curran*, 51 Iowa 112, 49 N. W. Rep. 1006, *per Adams, J.*

Drinking.

9. "Women have throats which become thirsty as well as the throats of men, and there is no law to

prevent them from slaking their thirst in a natural and ordinary way." *Com. v. Friends' Home for Children*, 7 Pa. Dist. 653.

Moral qualities.

10. "The virtue of a woman does not consist merely in her chastity." *Clark v. Periam*, 2 Atk. 337, *per* Lord Hardwicke, C.

11. "Chastity is the rule and not the exception with the female sex." *State v. Brinkhaus*, 34 Minn. 285, 25 N. W. Rep. 642, *per* Mitchell, J.

12. "A woman's chastity should be the 'immediate jewel of her soul.'" *Craft v. State*, 3 Kan. 450, *per* Crozier, C. J.

13. For a woman to be addicted to gaming and other extravagances is not virtuous behavior. *Clark v. Periam*, 2 Atk. 337.

14. It ought not to be said of a woman "when, in the warmth of sexual excitement and in the glow of natural passion, produced by the soft whisperings, the fervid protestations, the gentle pressures and other kindred blandishments which may be imagined, she submits to the embraces of her lascivious lover, that she pours out from her heart at Venus' shrine with her virtue every other good quality." *Craft v. State*, 3 Kan. 450, *per* Crozier, C. J.

Occupations.

15. "Women may enter upon and follow any of

the occupations of life ; they may be surgeons if they will." *Hassenyer v. Michigan Cent. R. Co.*, 48 Mich. 205, 12 N. W. Rep. 155, 42 Am. Rep. 470, *per* Cooley, J.

As soldiers.

16. "Woman as a soldier would have little to do besides marching, shooting, and being shot." *Lockwood's Case*, 9 Ct. Cl. 346, *per* Nott, J.

Quarrels among women.

17. "When there appears to be an unfortunate quarrel between two women which involves the families of each, and both are in fault, a court of equity will not interfere to protect one against the other and enjoin as a nuisance what one does against the other." *Medford v. Levy*, 31 W. Va. 649, 8 S. E. Rep. 302, 13 Am. St. Rep. 887, *per* Johnson, P.

Women's dress.

18. When a woman orders a dress from a dress-maker it is customary for her to call several times to try it on while it is being made. *Galvin v. MacKenzie*, 21 Oregon 184, *per* Lord, J.

19. "A woman, even though wealthy, may wear a cheap garment in the privacy of her own home if she pleases." *Hoban v. Piquette*, 52 Mich. 346, 17 N. W. Rep. 797, *per* Cooley, J.

Widows.

20. A widow is a single woman. *Stanley v. State*, 1 Shannon Tenn. Cas. 37.

21. "All widows are *prima facie* equally entitled to sympathy." *Com. v. Zacharias*, 181 Pa. St. 126, 37 Atl. Rep. 185, *per Williams*, J.

Status of women before courts.

22. The court will not dare to decide a question of right by a rule of courtesy and substitute deference to the female sex for deference to law. *Williams v. Simmons*, 79 Ga. 649, 7 S. E. Rep. 133.

23. "In protecting women, courts and juries should be careful to protect men, too, for men are not only useful to general society, but to women especially." *Humphrey v. Copeland*, 54 Ga. 543, *per Bleckley*, J.

24. "In the court-house, the standard of justice for both sexes is the same. Like the sun, the law shines on all who are in the same place with equal warmth and splendor. The most charming and attractive woman in the universe, loaded down with misfortune, is not to prevail as a suitor where she is in the wrong, be her adversary whom he may." *Boland v. Klink*, 63 Ga. 447, *per Bleckley*, J.

WOODS AND FORESTS.

See also LOGS AND LOGGING.

"A newly planted apple tree is a maiden tree." *Bullen v. Denning*, 5 B. & C. 842, *per Bayley*, J.

WORDS AND PHRASES.

In general.

1. "Words in themselves may be harmless while accent and manner may make them deadly." *State v. Kerns*, 47 W. Va. 266, 34 S. E. Rep. 734, *per Dent*, P.

2. "Words are evanescent ; they are as fleeting as the perishing flowers of spring." *Fonville v. M'Nease*, Dudley L. (S. Car.) 303, 31 Am. Dec. 556, *per O'Neill*, J.

3. "New words, phrases, and abbreviations are from time to time ingrafted upon the body of the language." *Power v. Bowdle*, 3 N. Dak. 107, 44 Am. St. Rep. 511, 54 N. W. Rep. 404, *per Wallin*, J.

4. On a criminal prosecution, "the dictionary definition of a term is frequently the mere air of the music which the accused has attempted to execute with variations.....It is something easier for an offender to baffle the dictionary than the Penal Code." *Minor v. State*, 63 Ga. 318, *per Bleckley*, J.

5. "Because the modesty of our lexicographers restrains them from publishing obscene words, or from giving the obscene signification to words that may be used without conveying any obscenity, it does not follow that they are not English words." *Edgar v. McCutchen*, 9 Mo. 768.

6. "The disposition of persons to magnify and exalt their callings or occupations has become wonder-

fully prevalent in these latter days. He who shoves a jackplane and wields a saw is no longer a 'carpenter' but an 'architect and builder;' the solicitor of orders from our retail merchants is no longer a 'drummer,' but a 'commercial traveler;' and the loquacious individual who scrapes your chin is no longer a 'barber,' but a 'tonsorial artist.' But this euphemistic style of dressing things in different or more high-sounding verbiage does not alter their essential nature." *State v. Fisher*, 119 Mo. 344, 24 S. W. Rep. 167, *per* Sherwood, J.

"Aged."

7. Persons not under fifty years of age are "aged." *In re Wall*, 42 Ch. D. 510.

8. A man sixty-six years old is "aged." *Allen v. Pearce*, 101 Ga. 316, 28 S. E. Rep. 859, 65 Am. St. Rep. 306.

"Article."

9. A horse is an "article." *Llandaff, etc., Dist. Market Co. v. Lyndon*, 8 C. B. N. S. 515, 98 E. C. L. 515.

"Bottle."

10. A demijohn is not a bottle. *U. S. v. Ninety Demijohns of Rum*, 8 Fed. Rep. 485.

"Broke."

11. To be "broke" is to be impecunious. *State v. Jackson*, 95 Mo. 660, 8 S. W. Rep. 765.

"Butcher."

12. It would seem that a butcher is "modernly designated as a meat market." *State v. Soper*, 148 Mo. 217, 49 S. W. Rep. 1007.

"Casualty."

13. A "casualty" is a sad accident—as fire or flood or some social or family disaster or misfortune. *Thompson v. Tillotson*, 56 Miss. 36.

"Cellar."

14. A cellar under an eating-house is as much a part of the eating-house as any other portion of the building. *State v. Clark*, 8 Fost. (N. H.) 176.

"Commodity."

15. A black bottle is a "commodity," even though it is filled with whiskey. *Shuttleworth v. State*, 35 Ala. 415.-

"Conversation."

16. "Conversation" means an exchange of thoughts or sentiments. *In re Fenton's Will*, 97 Iowa 192, 66 N. W. Rep. 99.

"Copper."

17. "'Copper' signifies policeman." *People v. Connor*, 68 Hun (N. Y.) 78, 22 N. Y. Supp. 669, *per Follett*, J.

"Do business."

18. To lend money and to promise to repay it are

to "do business." *Troewert v. Decker*, 51 Wis. 46, 8 N. W. Rep. 26, 37 Am. Rep. 808.

"Educational establishment."

19. A Bible Society is not an educational establishment. *Montreal v. Montreal Auxiliary Bible Soc.*, 6 Quebec Q. B. 251.

"Fire-engines."

20. Municipal water-works are not fire-engines. *Matter of Des Moines Water Co.*, 48 Iowa 324.

"Fruit."

21. "The term 'fruit' in legal acceptance is not confined to the produce of those trees which in popular language are called fruit trees, but applies also to the produce of oak, elm, and walnut trees." *Bullen v. Denning*, 5 B. & C. 842, *per* Bayley, J.

"Furniture."

22. "Wines, liquors, and groceries are not 'furniture.'" *Marquam v. Sengfelder*, 24 Oregon 2, 32 Pac. Rep. 676, *per* Moore, J.

"Gas"—"Oil."

23. "It would be a clear perversion of language to hold that 'gas' and 'oil' are synonymous terms." *Truby v. Palmer* (Pa. 1886), 6 Atl. Rep. 74.

"Gentleman."

24. The word "gentleman" is sufficiently descriptive of one who has no occupation. *Smith v. Cheese*, 1 C. P. D. 60, *per* Grove, J.

"Goods."

25. False teeth are "goods" within the meaning of the statute of frauds. *Lee v. Griffin*, 1 B. & S. 272, 101 E. C. L. 272.

"Growing crops."

26. Fruit-trees are not growing crops. *Cottle v. Spitzer*, 65 Cal. 456, 4 Pac. Rep. 435, 52 Am. Rep. 305.

"Henchman."

27. "A henchman is not, according to the ordinary meaning of the word, a policeman." *Barnes v. State*, 88 Md. 347, 41 Atl. Rep. 781.

"Her income."

28. The words "her income" seem to imply a living person. *Reed v. Coleman*, 51 Miss. 835.

"Home."

29. "The word 'home,' not only in its true etymology, but in its ordinary acceptation, means something more genial than a mere privilege to perambulate a dreary room. The common sense, as well as the common charity of the world, revolts at the idea that a word everywhere hallowed, even among barbarians, as typical of something sacred and beneficent should be dwarfed into the chilly proportions of a room fireless, bedless, and foodless." *Willett v. Carroll*, 13 Md. 459, *per* Le Grand, C. J.

"Hook."

30. "The common and ordinary meaning of the word 'hook' is not 'steal.'" Hays *v.* Mitchell, 7 Blackf. (Ind.) 117.

"Hunting."

31. "The word hunting does not, in its fair acceptance, extend to shooting feathered game. If one were to give leave to another to hunt over his premises, it would not give him the liberty of shooting there." Moore *v.* Plymouth, 7 Taunt. 614, 1 Moore 346, *per* Gibbs, C. J.

"Judges."

32. Where a witness "judges," he guesses. Wyman *v.* Herard, 9 Okla. 77, 59 Pac. Rep. 1009, *per* McAtee, J.

"Life."

33. "Life consists in the definite combination of heterogeneous changes, both simultaneous and successive, in correspondence with external coexistences and sequences, or in other words, in the continuous adjustment of internal relations to external relations. Consequently, Life is a continuous struggle." Coffey *v.* Home L. Ins. Co., 35 N. Y. Super. Ct. 314, *per* Freedman, J., *dissenting*.

"Loiter."

34. One cannot "loiter" in a place without being

there. *Armstrong v. State*, 14 Ind. App. 566, 43 N. E. Rep. 142.

“Machine.”

35. A hotel register is a machine. *Hawes v. Washburne*, 11 Fed. Cas. No. 6,242.

“Manufacturer.”

36. A person making and selling ice cream is not a manufacturer in the sense of the law or in any other sense of the word. *New Orleans v. Mannessier*, 32 La. Ann. 1075.

“Mechanic.”

37. An abstractor of titles is not a mechanic. *Tyler v. Coulthard*, 95 Iowa 705, 64 N. W. Rep. 681, 58 Am. St. Rep. 452.

“Medical assistance.”

38. “There is no rule of construction known or suggested admitting the inclusion of living expenses within the meaning of the term ‘medical assistance.’” *Employers’ Liability Assur. Corp. v. Light, etc., Co.*, 28 Ind. App. 437, 63 N. E. Rep. 54, *per* Roby, J.

“Merchant.”

39. The head cook in a restaurant is not a merchant. *Mar Bing Guey v. U. S.*, 97 Fed. Rep. 576.

“Milk.”

40. “Milk, according to Webster, is ‘a white fluid

secreted by female mammals for the nourishment of their young.' There are other kinds of milk, however, such as 'the white juice of plants,' which is the remote definition; or milk in the cocoanut, or that in the milky way.'" *Briffitt v. State*, 58 Wis. 39, 16 N. W. Rep. 39, 46 Am. Rep. 621, *per* Orton, J.

"Monkey business."

41. The court does not judicially know what "monkey business" is. *Barnes v. State*, 88 Md. 347, 41 Atl. Rep. 781.

"My."

42. "My" may mean "her." *Horton v. Cantwell*, 108 N. Y. 255, 15 N. E. Rep. 546.

"Never."

43. "Never" does not mean not. *Stockbridge v. Sussams*, 3 Q. B. 239, 43 E. C. L. 716.

"Not exceeding."

44. "Not exceeding" means not less than. *Miller v. Marx*, 55 Ala. 322.

"Oxen."

45. Although Shakespeare says that "boys and women are, for the most part, cattle," it may be well doubted whether the word "oxen" means boys and girls. *Henry v. State*, 45 Tex. 84.

"Pants."

46. The word "pants" describes a subject of larceny. *State v. Johnson*, 30 La. Ann. 904.

"Person of color."

47. A quadroon is a "person of color." Johnson *v.* Norwich, 29 Conn. 407.

"Persons in disguise."

48. The words "persons in disguise" do not include persons "in ambush or concealed in the bushes." Dale County *v.* Gunter, 46 Ala. 118.

"Portrait."

49. A grand equestrian picture representing the Duke of Schomberg mounted on a charger, holding a baton in his right hand, and with his countenance turned towards the spectator, is a portrait which passes under a bequest of a "portrait" of the Duke, although the battle of the Boyne is depicted in the background. Leeds *v.* Amherst, 13 Sim. 459.

"Procurer"—"Seducer."

50. A man cannot be a procurer and seducer at the same time and in one and the same instance without confounding distinctions and definitions well established and universally recognized. People *v.* Roderigas, 49 Cal. 9.

"Provisions."

51. The word "provisions" does not include cows. Wilson *v.* McMillan, 80 Ga. 733, 6 S. E. Rep. 182.

"Setting."

52. In dog parlance "setting" means "standing." Citizens' Rapid Transit Co. *v.* Dew, 100 Tenn. 317,

45 S. W. Rep. 790, 66 Am. St. Rep. 754, *per* Wilkes, J.

Should Providence determine otherwise.

53. Where in a contract a promise is made to do one thing, or "should Providence determine otherwise" to do another thing, it means that if the party fails "from any cause" to do the thing first mentioned the alternative right shall accrue. *Rue v. Rue*, 21 N. J. L. 369, *per* Nevius, J.

"Single man."

54. The term a "single man" includes an unmarried woman. *Silver v. Ladd*, 7 Wall. (U. S.) 219.

"Swipe."

55. To "swipe" means to steal. *State v. Lee*, 101 Iowa 389, 70 N. W. Rep. 594.

"Transaction."

56. "A transaction.....is something which has been transacted." *Craft Refrigerating Mach. Co. v. Quinnipiac Brewing Co.*, 63 Conn. 551, 29 Atl. Rep. 76, *per* Baldwin, J.

"Traveler."

57. One who goes fifteen miles from home is not a traveler. *State v. Smith*, 157 Ind. 241, 61 N. E. Rep. 566.

"Wages"—"Salary."

58. "The price of a locomotive is not wages or

salary." *Fidelity Ins., etc., Co. v. Shenandoah Valley R. Co.*, 86 Va. 1, 9 S. E. Rep. 759, 19 Am. St. Rep. 858.

"Wagon."

59. A hearse is a "wagon." *Spikes v. Burgess*, 65 Wis. 428, 27 N. W. Rep. 184.

60. The term "wagon" does not mean a hackney coach. *Quigley v. Gorham*, 5 Cal. 418, 63 Am. Dec. 139.

"Wearing apparel."

61. A watch is "wearing apparel." *In re Steele*, 2 Flipp. (U. S.) 324.

62. A bale of cotton is not comprehended by the terms "wearing apparel, household and kitchen furniture, and provisions." *Butler v. Shiver*, 79 Ga. 172, 4 S. E. Rep. 115.

WORK AND LABOR.

"Man goeth forth unto his work and to his labor until the evening." *Quoted by Taft, J., in Lewis v. Barker*, 55 Vt. 21.

"An angel's wing would droop if long at rest,
And God himself, inactive, were no longer blest."

Quoted by Champlin, J., in People v. Hanrahan, 75 Mich. 611, 42 N. W. Rep. 1124.

———"Nought is sleeping,
From the worm of painful creeping
To the cherub on the throne."

Quoted by Lumpkin, J., in Dacy v. State, 17 Ga. 439.

Origin of work.

1. "The first exercise of mechanical ingenuity was in the manufacture of fig-leaf aprons." *Artery v. State, 56 Ind. 328, per Perkins, C. J.*

Builders.

2. "It is clear that a builder must have some place in which to deposit his timber, bricks, and tiles." *Reg. v. Munson, 2 Cox C. C. 186, per Coleridge, J.*

Menials.

3. "An annual salary for a person who spends a forenoon in shaking the dust out of a carpet is too absurd to be thought of." *Compensation of Laborers, 9 Op. Atty.-Gen. 117, per Atty.-Gen. Jeremiah S. Black.*

4. "The work of scrubbing a floor can hardly be considered so absorbing as to prevent the person engaged therein from taking notice of his surroundings." *Baumler v. Narragansett Brewing Co. (R. I. 1902), 51 Atl. Rep. 203.*

Change of occupation.

5. For a manufacturer, visiting a relative, to assist

in loading hay, or for a farmer to go to the rescue of a shipwrecked crew, does not constitute a change of occupation. *Estabrook v. Union Casualty, etc., Co.* (Vt. 1902), 52 Atl. Rep. 1048.

Retired gentlemen.

6. The operation of a buzz-saw is not incident to the occupation of a retired gentleman. *Knapp v. Preferred Mut. Acc. Assoc.*, 53 Hun (N. Y.) 84, 6 N. Y. Supp. 57.

Zoology.

See ANIMALS, 37.

